TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 57

NORTHERN BUILDING AND LOAN ASSOCIATION, PETITIONER,

vs.

PETER A. CLEARY, S. N. SCHAFER, AND H. F. IBACH, AS THE BANKING COMMISSION OF THE BANKING DEPARTMENT OF THE STATE OF WISCONSIN, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

PETITION FOR CERTIORARI FILED MAY 15, 1935.

CERTIORARI GRANTED JUNE 3, 1935.

SUPREME COURT OF THE UNITED STATES

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 1, 1935.

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[fol. 1] [File endorsement omitted.]

IN SUPREME COURT OF THE UNITED STATES

No. —

NORTHERN BUILDING AND LOAN ASSOCIATION, a Corporation, Plaintiff and Appellant,

v.

PETER A. CLEARY, S. N. SCHAFER, and H. F. IBACH as the Banking Commission of the Banking Department of the State of Wisconsin, and CLYDE P. DIGGLES, Supervisor of Building and Loan Associations of the Banking Commission of the State of Wisconsin, Defendants and Appellees

PETITION FOR APPEAL—Filed May 1, 1935

To the Chief Justice of the Supreme Court of the State of Wisconsin:

Northern Building and Loan Association, a corporation, your petitioner, plaintiff and appellant in the above entitled cause, shows by this petition, and the Assignment of Errors filed herewith, that in the records, proceedings and decision in this cause in the Supreme Court of the State of Wisconsin, the same being the highest court of the State of Wisconsin, and the decision therein being final, manifest error has occurred, greatly to the damage of your petitioners.

This case is one in which the Circuit Court of Milwaukee County of the State of Wisconsin upon the complaint of your petitioner and other pleadings filed in this cause (No. 139,128) entered the following judgment:

"This cause being at issue and coming on for trial before the court, and having been tried before this court, Hon. Chas. L. Aarons, circuit judge presiding, on August 7, 1934, upon the issues of law raised in the pleadings on file herein, and the Court having ordered the entry of judgment as follows:

It is ordered, adjudged and declared:

(1) That the plaintiff association has the right and power to convert into a federal savings and loan association, and

that the Acts of Congress so providing, are valid and constitutional.

[fol. 2] (2) That the defendants have no right or authority to take possession of the plaintiff association to prevent its conversion into a federal savings and loan association.

(3) That the defendants, their agents, servants and employees be and they hereby are restrained and enjoined from taking possession of the plaintiff association or interfering in any way with the proposed conversion of the plaintiff into a federal savings and loan association.

(4) That the defendants' counterclaim be and the same hereby is dismissed on the merits."

Defendants and appellees herein appealed from said judgment to the Supreme Court of the State of Wisconsin, which court reversed said judgment by its decision filed on December 11, 1934, whereupon your petitioner moved for a rehearing which was denied by final order of the Supreme Court of the State of Wisconsin entered February 5, 1935. Over objection of petitioner, duly filed, and upon remittitur, the Circuit Court entered judgment on March 9, 1935 as follows:

"This cause having been tried before this court, Hon. Chas. L. Aarons, Circuit Judge presiding on August 7, 1934, and judgment having been rendered for the plaintiff on the 12th day of September, 1934, granting the said plaintiff the relief which it sought in its complaint and dismissing the defendants' counterclaim on its merits; and the defendants having duly appealed from the judgment, and the whole thereof, to the Supreme Court of the State of Wisconsin, by which the said judgment was on the 11th day of December, 1934, wholly reversed and a motion for rehearing denied February 5th, 1935; and the record in this cause having been duly remitted from the Supreme Court to the Circuit Court upon such reversal with directions by said appellate court that judgment be entered in favor of the defendants on their counterclaim; and due notice thereof having been given to the plaintiff as appears by the proofs on file; and due notice for the application of this judgment having been given;

On motion of J. E. Finnegan, Attorney General, Benjamin Poss and Joseph P. Brazy, of counsel, attorneys for the defendants,

It is ordered, adjudged and declared:

(1) That the complaint herein be and the same hereby is dismissed upon its merits.

(2) That the plaintiff association, its officers, directors, stockholders, agents and employees be and they are hereby restrained and enjoined from taking any other or further steps in the matter of the attempted conversion by said plaintiff association into a federal savings and loan association.

(3) That the defendants have full power and authority to take possession of the plaintiff association under the laws of the State of Wisconsin."

[fol. 3] Said judgment enjoined your petitioner from taking any other or further steps to convert itself into a federal savings and loan association notwithstanding that your petitioner was a member of the Federal Home Loan Bank of Chicago, had, except as prevented by said injunction, complied with all the rules and regulations of the Federal Home Loan Bank Board pursuant to paragraph 5 of the Act of Congress approved June 13, 1933 (48 Stat. 128, 132), as amended by Act of Congress approved April 27, 1934 (48 Stat. 643, 646) precedent to issuance by the Federal Home Loan Bank Board pursuant to authority vested in such Board by said Act of Congress of a charter to your petitioner as a corporation organized and existing under and by virtue of the laws of the United States of America. Such judgment was entered also notwithstanding that paragraph (i) of Section 5 of said Act (48 Stat. 128, 134), as amended, empowered any member of a Federal Home Loan Bank to convert itself into a federal savings and loan association, and your petitioner was a member of the Federal Home Loan Bank of Chicago.

As appears from the record and proceedings in this cause and the judgment entered therein, there was drawn in question the validity of a statute of the United States, to-wit: Section 5 of the Act of Congress approved June 13, 1933 (48 Stat. 128, 132), as amended by the Act of Congress approved April 27, 1934 (48 Stat. 643, 645), and particularly paragraph (i) of Section 5 of said Act of Congress,

as amended, and the decision in this cause of the Supreme Court of the State of Wisconsin, being a final decision of the highest court of said State, is against the validity of such statute of the United States. As appears from the record and proceedings in this cause and the judgment entered therein, there was specifically set up and claimed by petitioner certain titles, rights, privileges and immunities under said statute of the United States and said judgment in this cause denies such titles, rights, privileges and immunities claimed under said statute of the United States.

Said judgment held that your petitioner originally organized as a Wisconsin corporation under and by virtue of the laws of the State of Wisconsin, to wit: Chapter 215 of the Wisconsin Statutes, as amended, had no power, under [fol. 4] such statute or under Article XI, Section 1 of the Constitution of said State, to divest itself of the corporate character derived from said sovereign State by accepting a charter from any other sovereign government, to-wit: the government of the United States of America notwithstanding that under Section 2, Article VI of the Constitution of the United States said Act of Congress is the supreme law of the land. Such holding drew in question the validity of said Statute and the Constitution of the State of Wisconsin on the ground of their being repugnant to the Constitution and laws of the United States and is in favor of their validity.

The decision of the Supreme Court of Wisconsin was made, rendered and filed on December 11, 1934, the order denying the allowance of petition for rehearing from said decision was made and entered on February 5, 1935, upon remittitur, over objection of petitioner, the Circuit Court entered judgment on March 9, 1935, the final judgment in accordance with said decision was entered by said Supreme Court on the 1st day of May, 1935, upon appeal from said judgment of the Circuit Court.

Petitioner avers that the said statute of the United States, at the time of the institution of this action, had not expired by its own limitation and was not altered or repealed by law.

That, therefore, in accordance with Section 237 (a) of the Judicial Code (U. S. C., Title 28, Sec. 344), and in accordance with the Revised Rules of the Supreme Court of the United States, your petitioner respectfully shows this Court that the case is one in which, under the legislation in

force when the Act of Congress approved January 31, 1928, (45 Stat. 54) was passed; to wit: under Section 237 (a) of the Judicial Code, a review could be had in the Supreme Court of the United States on a Writ of Error, as a matter of right.

The errors upon which your petitioner claims to be entitled to an appeal are more fully set out in the Assignment of Errors, filed herewith, pursuant to the Revised Rules of the Supreme Court of the United States; and there is likewise filed herewith as required by the Revised Rules of the Supreme Court of the United States, a statement as to the jurisdiction of the Supreme Court of the United States.

Wherefore, petitioner prays:

1. For the allowance of an appeal from the Supreme Court of the State of Wisconsin to the Supreme Court of the United States in order that said judgment may be examined and reversed;

[fol. 5] 2. That a transcript of the record, proceedings and papers in this cause to be made and transmitted to the Supreme Court of the United States by the Clerk of the Supreme Court of the State of Wisconsin under his hand and the seal of the Supreme Court of the State of Wisconsin, pursuant to the Revised Rules of the Supreme Court of the United States;

3. That an order be entered fixing the amount of security for costs which petitioner shall furnish;

4. That upon proper security being furnished, all execution and other proceedings in this cause in the Supreme Court of the State of Wisconsin be stayed until the final determination of this cause upon this appeal to the Supreme Court of the United States.

John H. Schlintz, Attorney for Petitioner; Emery J. Woodall, Lyman W. Sherwood, of Counsel.

[fol. 6] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL

Northern Building and Loan Association, a corporation, plaintiff and appellant, in the above entitled cause, having

prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above entitled cause by the Supreme Court of the State of Wisconsin, on the 1st day of May, 1935, affirming a judgment entered by the Circuit Court of Milwaukee County of the State of Wisconsin on the 9th day of March, 1935, in accordance with an order directed to said Circuit Court by the Supreme Court of the State of Wisconsin, pursuant to a decision filed by said Supreme Court in said cause on the 11th day of December, 1934, and the order denying a motion for rehearing made and entered (on Feb. 5, 1935) and from each and every part thereof, and having presented and filed its Petition for Appeal, Assignment of Errors and Prayer for Reversal, and Statement of Jurisdiction, pursuant to the statutes of the United States and Revised Rules of the Supreme Court of the United States in such case made and provided;

[fol. 7] It is now hereby ordered that an appeal be, and the same is hereby allowed to the Supreme Court of the United States from the Supreme Court of the State of Wisconsin in the above entitled cause, as provided by law, and it is further ordered that the Clerk of the Supreme Court of the State of Wisconsin shall pursuant to the Revised Rules of the Supreme Court of the United States prepare and certify under his hand and the Seal of the Supreme Court of the State of Wisconsin a transcript of the record and all opinions delivered in this cause and transmit the same to the Supreme Court of the United States, so that the same shall be filed in the Supreme Court of the United States pursuant to the Revised Rules of the Supreme Court of the United States by or before the return day.

And it is further ordered that the said appellant shall give a good and sufficient supersedeas bond, in the sum of One Thousand ($1,000.00) Dollars, that said appellant shall prosecute said appeal to effect and answer all damages and costs if it fail to make its plea good, and that such supersedeas bond, as filed and approved, shall stay all execution and other proceedings in this cause in the Supreme Court of the State of Wisconsin until the final disposition of this cause by the Supreme Court of the United States.

Dated this 1st day of May, A. D. 1935.

Marvin B. Rosenberry, Chief Justice of the Supreme Court of the State of Wisconsin. (Seal Supreme Court of Wisconsin.)

[fol. 8] IN SUPREME COURT OF THE UNITED STATES, — TERM, 1935

[Title omitted]

ASSIGNMENT OF ERRORS

Northern Building and Loan Association, a corporation, appellant herein, as required by Section 997 of the Revised Statutes (U. S. C., Title 28, Sec. 862) and in accordance with Rule 9 of the Revised Rules of the Supreme Court of the United States, assigns the following errors in the record and proceedings in the Supreme Court of the State of Wisconsin in the above entitled cause:

1. The Supreme Court of the State of Wisconsin erred in directing and affirming the entry of an order by the Circuit Court of Milwaukee County, restraining and enjoining appellant from converting into a federal savings and loan association.

2. The Supreme Court of the State of Wisconsin erred in directing and affirming the entry of the judgment by the Circuit Court of Milwaukee County dismissing appellant's complaint upon its merits.

3. The Supreme Court of the State of Wisconsin erred in directing and affirming the entry of a judgment declaring that appellees have full power and authority to take possession of appellant association under the laws of the State of Wisconsin.

4. The Supreme Court of the State of Wisconsin erred under the pleadings in this cause in its decision in holding Section 5 of the Home Owners' Loan Act of 1933 (48 Stat. 128, 132), as amended, and more particularly paragraph (i) of Section 5 of said Act, as amended (48 Stat. 643, 646), invalid under the Constitution of the United States of America.

5. The Supreme Court of the State of Wisconsin erred

(a) In refusing in its decision to recognize and give effect to an Act of Congress validly enacted in the execution of the powers vested in the Federal Congress by the Constitution of the United States of America, to wit, Home Owners' Loan Act of 1933 (48 Stat. 128, 132), as amended.

[fol. 9] (b) In retarding, impeding, burdening and controlling the operations of said Act of Congress; and

(c) In denying titles, rights, privileges and immunities of appellant specially set up and claimed by appellant under said Act of Congress.

6. The Supreme Court of the State of Wisconsin erred in holding Chapter 215 of the Statutes of Wisconsin and Section 1 of Article IX of the Constitution of the State of Wisconsin valid as not repugnant to paragraph (i) of Section 5 of the Home Owners' Loan Act of 1933 (48 Stat. 128, 134), as amended by the Act of Congress approved April 27, 1934 (48 Stat. 643, 646), or to Section 2 of Article VI of the Constitution of the United States, which provides that the laws of the United States are the Supreme law of the land.

This is particularly true (a) when the Supreme Court of the State of Wisconsin in said holding construed said state statute and said section of the state constitution as blocking the flow of power from the Congress of the United States under said Act of Congress, as amended (48 Stat. 643, 646), enabling appellant to divest itself of its state charter and to accept a charter from the sovereign government of the United States by conversion and, (b) when Wisconsin Statutes as was recognized in said decision of the Supreme Court of the State of Wisconsin

(aa) Were silent upon the subject of conversion, and

(bb) Neither expressly prohibited conversion nor expressly empowered appellant so to convert.

7. The Supreme Court of the State of Wisconsin erred in holding that paragraph (i) of Section 5 of the Home Owners' Loan Act of 1933 (48 Stat. 128, 134), as amended by Act of Congress approved April 27, 1934 (48 Stat. 643, 646), merely permitted Wisconsin associations to convert only if and when the legislature of the State of Wisconsin enacted legislation consenting to such conversion, but did not empower conversion of appellant without legislation of the State of Wisconsin consenting to such conversion.

Prayer for Reversal

For which errors, appellant prays:

(1) That the decision and judgment of the Supreme [fols. 10-28] Court of the State of Wisconsin in the above entitled cause be reversed,

(2) That the writ of injunction issued be quashed and the injunction be dissolved, and

(3) That a judgment be rendered in favor of appellant, as prayed for in appellant's complaint as filed in the Circuit Court of Milwaukee County, and for costs.

John H. Schlintz, Attorney for Petitioner; Emery J. Woodall, Lyman W. Sherwood, of Counsel.

[fols. 29-31] Bond on appeal for $1,000.00 approved and filed May 1, 1935, omitted in printing.

[fols. 32-35] Citation in usual form showing service on Peter A. Cleary et al., filed May 1, 1935, omitted in printing.

[fol. 36] [File endorsement omitted]

IN SUPREME COURT OF THE UNITED STATES, — TERM, 1935

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed May 1, 1935

To the Clerk of the Supreme Court of the State of Wisconsin:

Appellant in the above entitled cause hereby indicates the portions of the record to be incorporated in the transcript thereof as follows:

1. Plaintiff's complaint in the original action in the Circuit Court of Milwaukee County of the State of Wisconsin, verified July 25, 1934.

2. Plaintiff's motion for issuance of an order to show cause and of a temporary restraining order, directed to defendants, made July 25, 1934.

3. Order to show cause of said Circuit Court, entered July 25, 1934, directed to defendants and order restraining defendants from seizing, taking possession of, or interfering in any way with plaintiff.

4. Summons in the original action, served July 25, 1934.

5. Motion by defendants to vacate said temporary restraining order and praying for an order restraining plain-
[fol. 37] tiff from proceeding with conversion pending final determination of the cause, made July 27, 1934.

6. Order restraining plaintiff from proceeding further with conversion pending the final determination of the cause, entered August 14, 1934.

7. Defendants' answer and counter claim, verified July 27, 1934.

8. Stipulation by respective counsel amending answer and counter claim, dated August 14, 1934.

9. Order of said Circuit Court amending answer and counter claim, entered August 14, 1934.

10. Plaintiff's reply to counter claim, verified August 7, 1934.

11. Stipulation by respective counsel that issue had been joined, that no issues of fact had been presented, and that court may render judgment upon the merits of the cause, dated August 7, 1934.

12. Affidavit of Secretary of plaintiff association that at a meeting of plaintiff association a majority of the total number of shares of stock of said association were voted in favor of conversion, dated September 12, 1934, and affidavit of Secretary as to plaintiff's assets and liabilities, August 3, 1934.

13. Decision of said Circuit Court, filed September 11, 1934.

14. Order of said Circuit Court for judgment, entered September 12, 1934.

15. Judgment of said Circuit Court, entered September. 12, 1934.

16. Defendants' notice of appeal, dated September 12, 1934.

17. Certificate of the Clerk of said Circuit Court, dated September 19, 1934.

18. Temporary restraining order directed to plaintiff, restraining it from taking further steps to convert itself pending final determination of the cause, entered September 12, 1934.

19. Defendants' appeal to the Supreme Court of the State of Wisconsin, dated September 12, 1934.

20.

21.

[fol. 38] 22. Decision of said Supreme Court, filed December 11, 1934.

23. Plaintiff's motion for rehearing, made December 19, 1934.

24. Order of said Supreme Court denying plaintiff's motion for rehearing, entered February 5, 1935.

25. Remittitur of cause to said Circuit Court, dated March 2, 1935.

26. Order of said Supreme Court to said Circuit Court directing judgment to be entered in favor of defendants on their counter claim, entered March 2, 1935.

27. Notice to plaintiff of remittitur, dated March 7, 1935.

28. Notice to plaintiff of defendants' motion for order for judgment in accordance with said Supreme Court's order on the remittitur, dated March 7, 1935.

29. Motion of defendants for order for judgment, made March 9, 1935, and plaintiff's objection to entry and judgment March 9, 1935.

30. Judgment of said Circuit Court entered March 9, 1935, in accordance with order of said Supreme Court entered March 9, 1935.

31. Plaintiff's notice of appeal, dated March 9, 1935, from said judgment of said Circuit Court, entered March 9, 1935.

32. Stipulation of respective counsel waiving cost and supersedeas bond on such appeal, dated March 9, 1935.

33. Order of said Circuit Court approving said stipulation of counsel, entered March 9, 1935.

34. Certificate of Clerk of said Circuit Court, dated April 24, 1935.

35. Plaintiff's appeal, dated March 9th, 1935, from the judgment of said Circuit Court, entered March 9, 1935.

36. Decision of said Supreme Court, filed *Dec. 11, 1934*, [fol. 39] May 1st. 1935, affirming judgment of said Circuit Court entered in favor of defendants, March 9, 1935.

37. Plaintiff's motion to said Supreme Court, made May 1st, 1935.

38. Order of said Supreme Court denying plaintiff's motion May 1st, 1935.

39. Plaintiff's petition for appeal to the Supreme Court of the United States, dated May 1st, 1935.

40. Plaintiff's assignment of errors and prayer for reversal, dated May 1st, 1935.

41. Plaintiff's statement of jurisdiction on appeal, dated May 1st, 1935.

42. Order of Supreme Court of State of Wisconsin allowing plaintiff's appeal, entered May 1st, 1935.

43. Plaintiff's cost and supersedeas bond, dated May 1st, 1935.

44. Citation directed to defendants, bearing proof of service, dated May 1st, 1935.

45. Proof of service of appeal papers on defendants, dated May 1st, 1935.

46. Copy of this praecipe, dated May 1st, 1935.

47. Certificate of Clerk of the Supreme Court of the State of Wisconsin, dated May 1st, 1935.

John H. Schlintz, Attorney for Petitioner; Emery J. Woodall, Lyman W. Sherwood, of Counsel.

[fol. 40] Received copy and admit service the 1st day of May, 1935.

James E. Finnegan, Atty. Gen., by J. E. Messerschmidt, Asst. Atty. Gen.

[fol. 41] [Caption omitted.]

[fol. 42] In Circuit Court of Milwaukee County

[File endorsement omitted]

Northern Building & Loan Association, a Corporation, Plaintiff,

versus

Peter A. Cleary, S. N. Schafer and H. F. Ibach as the Banking Commission of the Banking Department of the State of Wisconsin, and Clyde P. Diggles, Supervisor of Building and Loan Associations of the Banking Commission of the State of Wisconsin, Defendants

Order to Show Cause—Filed July 31, 1934

On the verified complaint of plaintiff hereto attached, on all the records, files and proceedings in the above entitled action, and on motion of John H. Schlintz, attorney for said plaintiff,

It is ordered that said defendants, and such of them, show cause, if any they have, before the court above named, in the Calendar Branch thereof, presided over by the Honorable John C. Kleczka, Circuit Judge, in the Calendar Court Room #500, in the New Court House in the city of Milwaukee, Milwaukee County, Wisconsin, on the 10th day of Sept., 1934, at nine o'clock A. M., or as soon thereafter as counsel can be heard, why the relief as prayed for in said complaint should not be granted.

It is further ordered that pending the hearing herein, and the further order of the court, said defendants, and each of them, as Banking Commission and Supervisor of Building and Loan Associations of the State of Wisconsin, their

employees, officers, agents and representatives, be and they hereby are temporarily enjoined and restrained from seiz-
[fol. 43] ing, taking possession of, or in any manner interfering with the property of every nature and kind of said plaintiff association.

It is further ordered that pending the hearing herein and the further order of this court, said defendants, and each of them, as Banking Commission and the Supervisor of Building and Loan Associations of the State of Wisconsin, be and they hereby are enjoined and restrained from removing the officers or directors, or in any manner interfering with the officers, directors or stockholders of said plaintiff in the conduct of the regular and lawful business of said plaintiff and in the conduct of any meeting or meetings called for the purpose of considering corporate business, and more particularly the conversion of said plaintiff Association into a Federal Savings and Loan Association.

Let a copy of this order to show cause and of the verified summons and complaint attached hereto be served on said defendants, and each of them, at least 10 days before the time set for hearing herein.

Dated, Milwaukee, Wisconsin, this 25 day of July, 1934.

Walter Schinz, Circuit Judge.

[fol. 44] In Circuit Court of Milwaukee County

[Title omitted]

[File endorsement omitted.]

Summons—Filed July 31, 1934

The State of Wisconsin, to the said defendants and each of them:

You are hereby summoned to appear within twenty days after service of this summons, exclusive of the day of service, and defend the above entitled action in the court aforesaid, and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint, of which a copy is herewith served upon you.

John H. Schlintz, Attorney for Plaintiff. Post office address, 152 W. Wisconsin Avenue, 416 Caswell Block, Milwaukee, Milwaukee County, Wisconsin.

[fol. 45] IN CIRCUIT COURT OF MILWAUKEE COUNTY

[Title omitted]

[File endorsement omitted.]

COMPLAINT—Filed July 31, 1934

Said plaintiff, Northern Building & Loan Association, by John H. Schlintz, its attorney, complains of said defendants and for cause of action alleges:

1. That plaintiff is and was at all times herein mentioned, a mutual loan and building association, duly organized under and pursuant to Chapter 93 of the Revised Statutes of the State of Wisconsin for the year 1898, and acts amendatory thereof and supplementary thereto, with its office and principal place of business in the city of Milwaukee, Milwaukee County, Wisconsin, engaged in the business of the creation and care of a mutual savings fund from payments made to it by members, the making of loans to its members upon real estate security situated within Milwaukee County, Wisconsin, and such other security authorized by the laws of the State of Wisconsin, and the By-laws of said Association.

2. That said defendants, Peter A. Cleary, S. N. Schafer and H. F. Ibach are and were at all times herein mentioned the duly appointed, qualified and acting Banking Commission of the Banking Department of the State of Wisconsin, and said defendant, Clyde P. Diggles is and was at all times [fol. 46] herein mentioned the duly appointed, qualified and acting Supervisor of Building and Loan Associations of said Banking Commission; that said defendants as such Banking Commission and as such Supervisor have power and authority pursuant to the Statutes of said state to supervise, examine and control the affairs of building and loan associations in said state and more particularly the affairs of said plaintiff.

3. That heretofore the Congress of the United States of America enacted and the President of the United States of America approved the Federal Home Loan Bank Act, and that pursuant thereto and in accordance therewith the Federal Home Loan Bank of Chicago, located in Evanston, Illinois, was duly organized and ever since said time has

been and now is such duly organized, existing and operating bank; that subsequently, to wit: on or about June 13, 1933, said Congress enacted and said President approved the Home Owners' Loan Act of 1933 and provided therein, among other things, for the organization, incorporation, examination, operation and regulation of associations to be known as "Federal Savings and Loan Associations" and to issue charters therefor, giving primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States; that by amendment duly enacted by said Congress and approved by said President on or about April 27, 1934, said Home Owners' Loan Act of 1933 was amended, and it was provided, among other things, in Section 5 (i) as follows:

"Any member of the Federal Home Loan Bank may convert itself into a Federal Savings and Loan Association under this Act upon a vote of 51 per centum or more of the votes cast at a legal meeting called to consider such action; but such conversion shall be subject to such rules and regulations as the Board may prescribe, and thereafter the con- [fol. 47] verted association shall be entitled to all the benefits of this section and shall be subject to examination and regulation to the same extent as other associations incorporated pursuant to this Act."

4. That pursuant to Section 215.07, Subparagraph 8, Wisconsin Statutes, said plaintiff, on or about November 14, 1932, applied to the banking commission of the Banking Department of the State of Wisconsin for permission and authority to become a member of and borrow money from aforementioned Federal Home Loan Bank of Chicago; that on or about November 16, 1932, such permission and authority was duly issued to and received by said plaintiff from A. G. Kingston, Commissioner of Banking of the State of Wisconsin by said defendant, Clyde P. Diggles, as Supervisor of Building and Loan Associations of Wisconsin; that pursuant to aforementioned Federal Home Loan Bank Act and to the permission and authority so granted by said Banking Commission of the State of Wisconsin, said plaintiff, on or about October 17, 1932, applied for membership, subscribed for forty-four (44) shares of stock in, to and of said Federal Home Loan Bank of Chicago, and on or about January 5, 1933, received from the Federal

Home Loan Bank Board at Washington, D. C., its official certificate of membership of said plaintiff in said bank dated as of August 11, 1933; that said plaintiff has been ever since said last mentioned date and is now a member in good standing and a stockholder in said Federal Home Loan Bank of Chicago.

5. That heretofore, to wit, on or about March 12, 1934, said plaintiff, in accordance with the provisions of said Home Owners' Loan Act of 1933, by its duly constituted officers and directors and by proper resolution, filed its application with and made application to said Federal Home Loan Bank of Chicago for permission to convert into a Federal Savings and Loan Association; that thereupon said bank made such examination of the affairs of the plain-[fol. 48] tiff and such appraisal as might be reasonably sufficient to determine the nature, character and value of its assets and the financial condition of said plaintiff, and that on or about July 20, 1934, after such examination and appraisal, it appeared to said Federal Home Loan Bank of Chicago that conversion of said plaintiff into a Federal Savings and Loan Association was feasible and advisable, and accordingly, on said last mentioned date, said Federal Home Loan Bank of Chicago, pursuant to said Home Owners' Loan Act of 1933 as amended April 27, 1934, granted permission to said plaintiff so to convert on a one-hundred-per-cent (100%) basis; that said permission so to convert has been at all times since said last mentioned date and now is outstanding and of full force and effect.

6. That subsequently, to wit, or or about July 24, 1934, said plaintiff, pursuant to said Home Owners' Loan Act of 1933, as amended, by its duly constituted Board of Directors and by proper resolution, issued and caused to be mailed to each of the stockholders of said plaintiff Association, at their last given post office address, a thirty-day notice in writing of a special meeting of said stockholders to be held at 2964 North Eleventh Street, city and county of Milwaukee, Wisconsin, on the 14th day of August, 1934, for the purpose of considering, determining and voting upon the recommendation and resolution of the Board of Directors of said plaintiff Association that said plaintiff convert itself into a Federal Savings and Loan Association as aforesaid.

7. That, as plaintiff is informed and verily believes, said defendants, and each of them, during the process of conversion of a similar building and loan association of Wisconsin, to wit: the Hopkins Street Building & Loan Association of Wisconsin, from a state to a Federal Building & Loan Association, threatened to take possession of said Association, its books, accounts, records and business, and [fol. 49] said defendants actually seized the books and accounts of said Association and attempted to take possession of said Association and to control its affairs on or about June 5, 1934; that said defendants refused to surrender and to return to said Association aforementioned property, books, records, and accounts, etc., until they were compelled to do so by order of said court.

8. That, as plaintiff is informed and verily believes, said defendants, and each of them, during the process of conversion similar to plaintiff's proposed conversion, from a State to a Federal Savings and Loan Association, on part of the West Lawn Building & Loan Association, located at Racine, Wisconsin, also threatened to seize and take over the business of said association by taking possession of its office, books and records, by threatening to oust the Board of Directors, by interfering with stockholders meetings and attempting to influence stockholders meetings, and by threatening said Association that if its proposed special stockholders meeting called for June 11, 1934, were not adjourned or dismissed, said defendants would, on the morning of June 11, 1934, take over all of the property of said Association, and that said defendants, and each of them, were enjoined by order of the Circuit Court of Racine County, Wisconsin, from interfering with said Association and its proposed meeting and conversion.

9. That, as plaintiff is informed and verily believes, said defendants, and each of them, immediately upon receipt of information or notice of the proposed conversion by said plaintiff as aforesaid and the proposed meeting of its stockholders, intend to attempt to seize and take over the affairs, business, property and assets of said plaintiff association, and to interfere with and prevent the proposed meeting of its stockholders, contrary to law and the Statutes, and without cause, excuse or justification; that, as [fol. 50] plaintiff is informed and verily believes, said de-

fendants, and each of them, have threatened and will proceed to oust the officers and directors and to take possession of the business assets and operation of each and every building and loan association of the State of Wisconsin which attempts or takes any steps toward converting itself into a Federal Savings and Loan Association, and more particularly the plaintiff Association, and for no other cause, purpose, reason or excuse than merely the fact of such attempted and proposed conversion.

10. That said plaintiff is not now violating and never has violated its Charter, by-laws, or any law under which it operates or the direction or orders of the Banking Department or the banking commission or the Supervisor of Building and Loan Associations of the State of Wisconsin; that the affairs of said Association are in sound condition, its business is conducted in a safe and authorized manner, its capital is wholly unimpaired, it is now and has been at all times herein mentioned a solvent and going concern, and that there is no valid reason, cause or excuse, and no legal or equitable grounds for said defendants, or any or either of them, to take possession of said plaintiff Association; that all the assets, books of account, records and proceedings of said plaintiff association, including both real and personal property, are located and are within the County of Milwaukee, State of Wisconsin, and that such proposed and threatened seizure and control by said defendants is contrary to the judgment and will of the officers, directors and stockholders of said corporation and will result in serious and irreparable damage to said plaintiff Association.

Wherefore this plaintiff demands judgment against said defendants, and each of them, as such Banking Commission and Supervisor of Building and Loan Associations:

[fol. 51] 1. That an order be issued temporarily restraining and enjoining said defendants, and each of them, their employees, agents and representatives, from seizing, taking possession of, carrying away, keeping or retaining any of the property, books of accounts, records, or assets of said plaintiff, and from interfering with the conduct and management of the business of said plaintiff Association.

2. That said defendants, and each of them, their employees, agents and officers, be restrained and enjoined

from interfering with the officers, directors or stockholders of said plaintiff Association, and with any meeting or meetings of said officers, directors or stockholders called for the purpose of considering, determining and voting upon the lawful business and affairs of said plaintiff Association, and more particularly aforementioned proposed conversion.

3. That said defendants, and each of them, as such Banking Commission and Supervisor of Building and Loan Associations of Wisconsin, their employees, agents and representatives be permanently restrained and enjoined from interfering with the property and lawful conduct and business of said plaintiff.

4. That plaintiff have such other and further relief as may appear just and equitable in the premises.

John H. Schlintz, Attorney for Plaintiff.

[fols. 52 & 53] *Duly sworn to by B. F. Kuehlhorn. Jurat omitted in printing.*

[fol. 54] IN CIRCUIT COURT OF MILWAUKEE COUNTY

[Title omitted]

[File endorsement omitted.]

ANSWER AND COUNTERCLAIM—Filed July 31, 1934

Now come the defendants and for their answer to the complaint hereby:

I

Admit the allegations contained in paragraphs designated "I", "II", "III", "IV", and "VII" of the complaint.

II

Admit upon information and belief the allegations contained in paragraphs designated "V" and "VI" of the complaint.

III

Deny all of the allegations contained in paragraph designated "VIII" of the complaint except that the said defend-

ants were enjoined by order of the Circuit Court of Racine County, Wisconsin from interfering with said association and its proposed meeting and conversion.

IV

With reference to the allegations contained in paragraph designated "IX" of the complaint, allege that the first information or notice of the proposed conversion by the plain- [fol. 55] tiff was received by the defendants upon the service of the summons and complaint in this action, and prior to the service of said summons and complaint the defendants had no information or notice of any kind whatsoever of said proposed conversion; allege that the defendants have made no attempt to seize and take over the affairs, business property or assets of the plaintiff; allege that the defendants have made no attempts to interfere with or prevent the proposed meeting of the plaintiff's stockholders; deny that the defendants have threatened to oust the officers and directors to take possession of the business, assets and operation of the building and loan associations of the State of Wisconsin which attempt to or take any steps toward conversion into a federal savings and loan association; deny that the defendants have made any threats with reference to the plaintiff association.

V.

With reference to the allegations contained in paragraph designated "X" of the complaint, allege that the attempted conversion by the said plaintiff association as set forth in the complaint was and is a violation of its charter, by-laws, and the laws of the State of Wisconsin; allege that under the laws of the State of Wisconsin the Banking Commission is authorized to take possession of the property and business of any building and [illegible] association organized under the laws of the State of [illegible]nsin which has violated its charter or the laws of this State; deny that the taking over of possession of the plaintiff by the defendants will result in any damage to the plaintiff association.

VI.

As a separate defense to this action, the defendants allege upon information and belief that under and pursuant to

[fol. 56] the provisions of Sec. 215.33 (10) of the Wisconsin statutes the Circuit Court of Milwaukee County has no right or power to entertain the alleged cause of action contained in plaintiff's complaint and that the plaintiff's sole remedy in the event that the property and business of the plaintiff is taken over by the Banking Commission, if it deem itself aggrieved thereby, is to apply to the Circuit Court of Dane County to enjoin further proceedings by said Banking Commission.

Further answering the complaint herein and by way of counterclaim, the defendants allege as follows:

I.

The plaintiff is a building and loan association organized and existing under and by virtue of the laws of the State of Wisconsin with its principal office and place of business in the City and County of Milwaukee, Wisconsin.

II.

The defendants Peter A. Cleary, S. N. Schafer and H. F. Ibach are the duly appointed, qualified and acting banking commissioners of the Banking Department of the State of Wisconsin; the defendant Clyde P. Diggles is the duly appointed, qualified and acting building and loan supervisor employed by the Banking Commission of the State of Wisconsin.

III.

Pursuant to the provisions of Chapter 215 of the Wisconsin statutes, said Banking Commission is vested with the control and supervision of all building and loan associations organized under the laws of the State of Wisconsin or other similar laws, or authorized to transact business in the State of Wisconsin; pursuant to the provisions of Sec. [fol. 57] 215.33 of the Wisconsin statutes said Banking Commission is given full power to take possession and liquidate a building and loan association when it shall appear, among other things, that said building and loan association has violated its charter or any of the laws of the State of Wisconsin.

IV.

On or about March 12, 1934, the plaintiff through its officers and directors made application, without the consent

or authority of the Banking Commission of the State of Wisconsin, to the Federal Home Loan Bank Board for permission to convert itself into a federal savings and loan association under the provisions of Sec. 5 (i) of the Home Owners' Loan Act of 1933 as amended by the Seventy-third Congress on April 27, 1934. Thereafter, as defendants are informed and believe, the said Federal Home Loan Bank Board granted said permission to said plaintiff association.

V.

Subsequently, to-wit: on or about July 24, 1934, the said plaintiff, as defendants are informed and believe, mailed to each of its stockholders a notice in writing of a special meeting of said stockholders to be held August 14, 1934 for the purpose of voting upon a recommendation and a resolution of the Board of Directors of said plaintiff association that said plaintiff convert itself into a federal savings and loan association.

VI.

As defendants are informed and believe, the plaintiff association has no right or power to convert itself into a federal savings and loan association; that such conversion is in violation of its charter and the laws of the State of [fol. 58] Wisconsin; that any acts of Congress or rules and regulations of the Federal Home Loan Bank Board which purport to authorize said conversion without the consent of and in violation of the laws of the State of Wisconsin are void and of no effect and in violation of the Constitution of the United States of America and the Constitution of the State of Wisconsin; that Congress has no right or power under the Constitution of the United States of America to authorize the conversion of a state building and loan association into a federal savings and loan association contrary to the laws of the State of Wisconsin or without state legislation consenting to such conversion.

VII.

As defendants are informed and believe, the plaintiff association will unlawfully convert itself into a federal savings and loan association unless restrained by this Court from taking any further steps in said attempted conver-

sion; that said plaintiff proposes and intends to accept a charter from the Federal Home Loan Bank Board and to discontinue doing business as a Wisconsin building and loan association under the jurisdiction of the Banking Commission; that the plaintiff intends to transfer all of its assets to said proposed federal association and to issue to its members stock certificates in said federal association in lieu of stock certificates issued by the plaintiff, all in violation of the laws of the State of Wisconsin and the orders of the Banking Commission of the State of Wisconsin.

Wherefore, the defendants pray judgment against the plaintiff as follows:

(1) Dismissing the complaint of the plaintiff herein upon its merits.

(2) Declaring that the defendants have full power and authority to take possession of the plaintiff association [fol. 59] under the laws of the State of Wisconsin.

(3) Restraining and enjoining the plaintiff association, its officers, directors, stockholders, agents and employes, from taking any other or further steps in said attempted conversion by said plaintiff into a federal savings and loan association.

(4) And for such other and further relief as may be just an equitable and for the defendants' costs and disbursements in this action.

J. E. Finnegan, Attorney General, John E. Martin, Assistant Attorney General, Benjamin Poss, Of Counsel, Attorneys for the Defendants.

[fols. 60 & 61] *Duly sworn to be Peter A. Cleary. Jurat omitted in printing.*

[fol. 62] [File endorsement omitted.]

IN CIRCUIT COURT OF MILWAUKEE COUNTY

[Title omitted]

STIPULATION AND ORDER AMENDING ANSWER AND COUNTER-CLAIM—Filed Aug. 14, 1934

It is hereby stipulated and agreed by and between the parties to the above entitled action through their respective

counsel that defendants may amend their Answer and Counterclaim in the following manner:

(a) By striking paragraph designated "VI" of the defendants' Answer.

(b) By amending paragraph designated "VI" of the defendants' Counterclaim so as to read as follows:

"VI

Defendants are informed and believe that the United States of America has no right or power to create federal savings and loan associations; that the provisions of Sec. 5 of the Home Owners' Loan Act of 1933, as amended, purporting to authorize the creation of such federal savings and loan associations, are unconstitutional in that Congress has no express or implied power to create such associations; that the creation of such associations is wholly outside the powers vested in Congress by Sec. 8 of Article I of the Constitution, or any other provision of the Constitu- [fol. 63] tion of the United States, and is in direct violation of Article X of the Amendments to the Constitution of the United States; that the provisions of Sec. 5 (a) of said Home Owners' Loan Act of 1933, as amended, which purport to delegate to the Federal Home Loan Bank Board the power and authority, "under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation, of associations to be known as 'Federal Savings and Loan Associations', and to issue charters therefor" is an unconstitutional delegation of legislative power by the Congress of the United States in violation of Sec. 1 of Article I of the Constitution of the United States; that the plaintiff association has no right or power to convert itself into a federal savings and loan association; that such conversion is in violation of its charter and the laws of the State of Wisconsin; that the provisions of Sec. 5 (i) of the Home Owners' Loan Act of 1933, as amended, if construed to authorize said conversion without the consent of or in violation of the laws of the State of Wisconsin, are void and of no effect and in violation of the Constitution of the United States because Congress has no right or power under the Constitution of the United States to authorize the conversion of a state building and loan associataion into a federal

savings and loan association contrary to the laws of the State of Wisconsin or without legislation of the State of Wisconsin consenting to such conversion; that said Sec. 5 (i), if construed to permit said conversion without State consent, is unconstitutional in that Congress has no express or implied power to authorize such conversion under the provisions of Sec. 8 of Article I of the Constitution of the [fol. 64] United States, or any other provision of the Federal Constitution, and is in violataion of Article X of the Amendments to the Constitution of the United States; that the provisions of said Sec. 5 (i) deny to all stockholders of the plaintiff association who do not desire the association to convert, the equal protection of the laws and deprive them of property without due process of law, in violation of Sec. 1 of Article XIV of the Amendments to the Constitution of the United States."

John H. Schlintz, Attorney for Plaintiff. James C. Finnegan, Att'y Gen'l; J. E. Martin, Ass't Att'y Gen'l, and Benj. Poss of Counsel, by J. P. Brazy, Attorneys for Defendants.

Upon the foregoing stipulation, it is ordered:

(a) That paragraph designated "VI" of the defendants' Answer be and the same is hereby stricken.

(b) That paragraph designated "VI" of the defendants' counterclaim be and hereby is amended so as to read:

"VI

Defendants are informed and believe that the United States of America has no right or power to create federal savings and loan associations; that the provisions of Sec. 5 of the Home Owners' Loan Act of 1933, as amended, purporting to authorize the creation of such federal savings and loan associations, are unconstitutional in that Congress has no express or implied power to create such associations; that the creation of such associations is wholly outside the powers vested in Congress by Sec. 8 of Article I [fol. 65] of the Constitution, or any other provision of the Constitution of the United States, and is in direct violation of Article X of the Amendments to the Constitution of the United States; that the provisions of Sec. 5 (a) of

said Home Owners' Loan Act of 1933, as amended, which purport to delegate to the Federal Home Loan Bank Board the power and authority, "under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation, of associations to be known as 'Federal Saving and Loan Associations', and to issue charters therefor" is an unconstitutional delegation of legislative power by the Congress of the United States in violation of Sec. 1 of Article I of the Constitution of the United States; that the plaintiff association has no right or power to convert itself into a federal savings and loan association; that such conversion is in violation of its charter and the laws of the State of Wisconsin; that the provisions of Sec. 5 (i) of the Home Owners' Loan Act of 1933, as amended, if construed to authorize said conversion without the consent of or in violation of the laws of the State of Wisconsin, are void and of no effect and in violation of the Constitution of the United States because Congress has no right or power under the Constitution of the United States to authorize the conversion of a state building and loan association into a federal savings and loan association contrary to the laws of the State of Wisconsin or without legislation of the State of Wisconsin consenting to such conversion; that said Sec. 5 (i), if construed to permit said conversion without State consent, is unconstitutional in that Congress has no express or implied power to authorize such conversion under the provisions of Sec. 8 of Article I of the Constitu-
[fols. 66 & 67] tion of the United States, or any other provision of the Federal Constitution, and is in violation of Article X of the Amendments to the Constitution of the United States; that the provisions of said Sec. 5 (i) deny to all stockholders of the plaintiff association who do not desire the association to convert, the equal protection of the laws and deprive them of property without due process of law, in violation of Sec. 1 of Article XIV of the Amendments to the Constitution of the United States.

By the court:

Chas. L. Aarons, Circuit Judge.

Dated August 14th, 1934.

[fol. 68] IN CIRCUIT COURT OF MILWAUKEE COUNTY

[Title omitted]

[File endorsement omitted.]

REPLY—Filed Sept. 11, 1934

And now comes the above named plaintiff and for reply to defendants' answer and counterclaim and amended answer and counterclaim herein:

I

Admits the allegations contained in Paragraph I.

II

Admits the allegations contained in Paragraph II.

III

Admits the allegations contained in Paragraph III.

IV

Admits the allegations contained in Paragraph IV of said counterclaim, and in further answer thereto alleges that the consent or authority of the Banking Commission of the State of Wisconsin, to convert itself into a Federal Savings and Loan Association is not required or necessary under the provisions of Section 5 (i) of the Home Owners' Loan Act of 1933, as amended by the Seventy-third Congress on April 27, 1934.

[fol. 69]

V

Admits the allegations contained in Paragraph V.

VI

Denies that plaintiff association has no right or power to convert itself into a Federal Savings and Loan Association, and denies that such conversion is in violation of its charter or the laws of the State of Wisconsin; denies that the acts of Congress or rules and regulations of the Federal Home Loan Bank Board which purport to authorize said conversion without the consent of and in violation of the laws of the State of Wisconsin are void and of no effect

and in violation of the Constitution of the United States of America and the Constitution of the State of Wisconsin; denies that the Congress has no right or power under the Constitution of the United States of America to authorize the conversion of a state building and loan association into a Federal Savings and Loan Association, contrary to the laws of the State of Wisconsin, or without state legislation consenting to such conversion as alleged in Paragraph VI of defendants' counterclaim.

VII

Plaintiff denies that it will unlawfully convert itself into a Federal Savings and Loan Association, unless restrained by the court from taking any further steps in said attempted conversion; admits that it proposes and intends to accept a charter from the Federal Home Loan Bank Board and in the event said charter is granted, to discontinue doing business as a Wisconsin building and loan association, in the event the stockholders of said plaintiff association should so elect at a meeting regularly held for such [fol. 70] purpose; denies that any act in said attempted conversion as alleged in Paragraph VII of defendants' counterclaim is in violation of the laws of the State of Wisconsin, and orders of the banking commission of the State of Wisconsin.

VIII

Denies that the United States of America has no right or power to create Federal Savings and Loan Associations; denies that the provisions of Section 5 of the Home Owners' Loan Act of 1933, as amended, purporting to authorize the creation of such Federal Savings and Loan Associations, are unconstitutional and denies that the Congress has no express or implied power to create such associations; denies that the creation of such associations is wholly outside the powers vested by Congress by Section 8 of Article I of the Constitution, or any other provision of the Constitution of the United States, and denies that it is in direct violation of Article X of the Amendments to the Constitution of the United States; denies that the provisions of Section 5 (a) of said Home Owners' Loan Act of 1933, as amended, which purport to delegate to the Federal Home Loan Bank Board the power and authority,

"under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation and regulation, of associations to be known as 'Federal Savings and Loan Associations', and to issue charters therefor" is an unconstitutional delegation of legislative power by the Congress of the United States and denies that it is in violation of Section 1 of Article I of the Constitution of the United States; denies that the plaintiff association has no right or power to convert itself into a Federal Savings and Loan Association; denies that such [fol. 71] conversion is in violation of its charter and the laws of the State of Wisconsin; denies that the provisions of Section 5 (i) of the Home Owners' Loan Act of 1933, as amended, if construed to authorize said conversion without the consent of or in violation of the laws of the State of Wisconsin, are void and of no effect and denies that it would be in violation of the Constitution of the United States because Congress has no right or power under the Constitution of the United States to authorize the conversion of a state building and loan association into a Federal Savings and Loan Association contrary to the laws of the State of Wisconsin or without legislation of the State of Wisconsin consenting to such conversion; denies that said Section 5 (i) if construed to permit said conversion without State consent, is unconstitutional in that Congress has no express or implied power to authorize such conversion under the provisions of Section 8 of Article I of the Constitution of the United States, or any other provision of the Federal Constitution, and denies that it is in violation of Article X of the Amendments to the Constitution of the United States; denies that the provisions of said Section 5 (i) deny to all stockholders of the plaintiff association who do not desire the association to convert, the equal protection of the laws and deprive them of property without due process of law, in violation of Section 1 of Article XIV of the Amendments to the Constitution of the United States.

Wherefore, plaintiff demands judgment as prayed for in its complaint and that defendants' counterclaim be dismissed with costs.

John H. Schlintz, Attorney for Plaintiff; Lyman Sherwood, Of Counsel.

[fol. 72] *Duly sworn to by B. F. Kuehlhorn. Jurat omitted in printing.*

[fol. 73] Due service is hereby admitted 7th day of August, 1934.

Poss, Toelle & Schuler, by J. P. Brazy.

[fols. 74 & 75] In Circuit Court of Milwaukee County

[Title omitted]

[File endorsement omitted.]

Notice of Motion for Restraining Order, etc.—Filed July 31, 1934.

Please take notice that the defendants will move this Court for an order vacating the temporary restraining order contained in the order to show cause issued in this action under date of July 25, 1934 before the Calendar Branch of the Circuit Court at the Court House in the City and County of Milwaukee, Wisconsin, on August 4, 1934 at 9:00 o'clock A. M. or as soon thereafter as counsel can be heard.

At said time and place the said defendants will further move the Court upon the verified answer and counterclaim of the defendants herein for an order restraining and enjoining the plaintiff, its officers, directors, stockholders, agents and employes, pending the final determination of this action, from taking any other or further steps in its attempt to convert into a federal savings and loan association.

Dated July 27th, 1934.

J. E. Finnegan, Attorney General; John E. Martin, Assistant Attorney General; Benjamin Poss, of Counsel, Attorneys for the Defendants.

To John H. Schlintz, Esq., Attorney for Plaintiff.

[fol. 76] IN CIRCUIT COURT OF MILWAUKEE COUNTY

[Title omitted]

[File endorsement omitted.]

AFFIDAVIT OF B. F. KUEHLHORN—Filed Aug. 7, 1934

STATE OF WISCONSIN,
Milwaukee County, ss:

B. F. Kuehlhorn, being first duly sworn on oath deposes and says that he is an officer of the above named plaintiff corporation, to wit: Secretary thereof.

That the following is a true and correct trial balance of the assets and liabilities of said Northern Building & Loan Association, as of the 30th day of June, 1934, to wit:

Assets

Assets	$2,527,591.74	
Cash on hand	27,749.58	
Total assets		$2,555,341.32

Liabilities

Installment stock due	$430,616.65	
" " Dividends	66,116.18	
Paid-up stock	1,699,400.00	
Federal Home Loan Bank Note payable	226,750.00	
Incomplete mortgage loans	25.00	
Forfeited stock	9.52	
Real estate reserve	- 4,652.41	
Contingent fund	118,000.00	
Undivided profits	9,771.56	
Total liabilities		$2,555,341.32

[fols. 77 & 78] That the source of your affiant's knowledge and grounds for his belief as to the truth of the foregoing statement is his personal knowledge of the books and records of said association and from the reports made to him by his subordinates in his employ as such officer of said Association.

B. F. Kuehlhorn.

Subscribed and sworn to before me this 3rd day of August, 1934. John Schlintz, Notary Public, Milwaukee Co., Wis. My commission expires 2/17/35.

[fol. 79] IN CIRCUIT COURT OF MILWAUKEE COUNTY

[Title omitted]

[File endorsement omitted.]

AFFIDAVIT OF B. F. KUEHLHORN—Filed Sept. 14, 1934

STATE OF WISCONSIN,
Milwaukee County, ss:

B. F. Kuehlhorn, being first duly sworn on oath deposes and says that he is an officer of the Northern Building & Loan Association, a corporation; to wit: its Secretary, and that at the Special Meeting held by the stockholders of said Association called for the purpose of conversion of said Association into a Federal Savings and Loan Association, the actual number of shares represented at said meeting, either in person or by proxy was 23,302 shares, and that 23,291 shares voted in favor of the adoption of said resolution and 11 shares voted against the adoption of said resolution, and that the total outstanding stock of said association on the date of said stockholders meeting was 35,308 [fol. 80] shares.

B. F. Kuehlhorn. Subscribed and sworn to before me this 12th day of September, 1934. John Schlintz, Notary Public, Milwaukee Co., Wis.

[fol. 81] Received a copy this 14th day of September, 1934. J. E. Finnegan, Atty. Gen.; John E. Martin, Ass't. Atty. Gen.; Benjamin Poss, of Counsel, by J. P. Brazy.

[fols. 82 & 83] IN CIRCUIT COURT OF MILWAUKEE COUNTY

[Title omitted]

[File endorsement omitted.]

STIPULATION AS TO HEARING, ETC.—Filed Sept. 12, 1934

It is hereby stipulated by and between the parties to this action through their respective counsel that issue in

this action on plaintiff's complaint, defendants' answer and counterclaim and amended answer and counterclaim, and plaintiff's reply thereto, has been joined; that no issue of fact is presented and that upon the hearing held in Court on August 7th, 1934 the Court may render judgment upon the merits of this cause as contained in the pleadings on file herein and without the taking of any testimony.

Dated August 7th, 1934.

John H. Schlintz, Attorney for Plaintiff. J. E. Finnegan, Atty. Gen.; J. E. Martin, Asst. Atty. Gen.; Benj. Poss of Counsel, Attorneys for Defendants. By J. P. Brazy.

[fol. 84] In Circuit Court of Milwaukee County

Branch 8

Reliance Building & Loan Association, Plaintiff,

vs.

Peter A. Cleary, et al., Defendants

Northern Building & Loan Association, Plaintiff,

vs.

Peter A. Cleary, et al., Defendants

[File endorsement omitted.]

Opinion—Filed Sept. 11, 1934

The two plaintiff Associations seek to convert themselves into Federal Savings & Loan Associations pursuant to Section 5 (i) of the Act of Congress known as the Home Owners' Loan Act of 1933 as amended. They brought these actions to restrain the defendants (who are members of the Banking Commission and Supervisor of Building and Loan Associations of Wisconsin) from interfering with such proposed conversion.

Arguments and briefs have been submitted upon motions made by each side to restrain the other.

The questions involved will be stated in the headings and will be dealt with in this opinion.

I. Does the language of Sec. 5(i) of the Home Owners' Loan Act of 1933, as amended, imply necessity of legal consent by the State to the proposed conversion of State building and loan associations into Federal savings and loan associations?

[fol. 85] This question is presented initially because, if answered in the affirmative, consideration of the constitutionality of the Act becomes unnecessary.

Sec. 5(i), as amended in 1934, provides:

"Any member of the Federal Home Loan Bank may convert itself into a Federal savings and loan association under this Act upon a vote of 51 per centum or more of the votes cast at a legal meeting called to consider such action; but such conversion shall be subject to such rules and regulations as the Board may prescribe, and thereafter the converted association shall be entitled to all the benefits of this section and shall be subject to examination and regulation to the same extent as other associations incorporated pursuant to this Act."

This is an amendment of the section as it was originally enacted in which the pertinent language used was: "upon a vote of its stockholders as provided by the law under which it operates." The rules and regulations adopted by the Federal Home Loan Bank Board for Federal savings and loan associations were enacted prior to the 1934 amendment of the statute. In those rules it was provided that "conversion will not be approved until a vote is obtained which * * * is a vote which under the State law authorizes conversion." The amendment of the Act of Congress on the specific subject of the vote required indicates an intention to effectuate the conversion regardless of any provision of a State law on the subject. The rules, of course, are superseded by the subsequent amendment of the Act. The term "legal meeting" cannot, in view of the context—as just referred to—be said to imply consent of the State to a proposed conversion. Those words can have reference only to the legal requirements precedent to calling and holding a meeting. Although the consent of the State to the proposed conversion be not obtained, the meeting itself is not illegal if called and held pursuant to the laws or rules governing the procedure of holding a meeting.

Since the question (in the heading) must therefore be [fol. 86] answered negatively, it becomes necessary to consider the validity of the Act of Congress authorizing the incorporation of "Federal savings and loan associations", and particularly, the conversion of State associations into Federal associations. .(Secs. 5(a) and 5(i) of Home Owners' Loan Act of 1933 as amended.)

II. Has Congress the power to incorporate savings and loan associations?

It is conclusively established by the highest judicial authority that Congress possesses the power to incorporate banks to provide means deemed appropriate by Congress to carry out the sovereign powers enumerated in Article I, Section 8, of the United States Constitution. The Supreme Court of the United States has affirmed this power with respect to the establishment of the National Bank of the United States in the early part of the last century, the establishment of a national banking system after the Civil War, and the more recent establishment of Federal Land Banks and Joint Stock Land Banks. McCulloch v. Maryland, 4 Wheat. 316, 4 L. Ed. 579; Osborn v. Bank of United States, 9 Wheat, 738, 6 L. Ed. 204; Farmers & Merchants Bank v. Dearing, 91 U. S. 29, 23 L. Ed. 196; Smith v. Kansas City Title & Trust Co., 255 U. S. 180, 65 L. Ed. 577.

The power of Congress is held to extend not merely to the establishment of the bank, and the granting to it of authority to serve governmental purposes, but the granting of such additional functions as are appropriate and relevant to a successful banking business, even though they are of a private nature, and considered isolatedly, are not within the implied power of Congress. Osborn v. Bank, 9 Wheat. 738, 6 L. Ed. 204; First National Bank v. Fellows, 244 U. S. 416, 61 L. Ed. 1233, 1237; Smith v. Kansas City Title & Trust Co., 255 U. S. 180, 65 L. Ed. 577, 589.
[fol. 87] A principal consideration upon which Chief Justice Marshall rested the authority to create the bank was the fact that its formation was required by the fiscal operations of the government. Id. p. 589.

The title of the Home Owners' Loan Act of 1933 includes, among other language, the words, "to increase the market for obligations of the United States." The provisions for the Federal savings and loan associations are contained in

Sec. 5 of the Act. Sec. 5 (k) permits such associations to be employed as fiscal agents of the Government. But neither the title nor any express designation of purpose is all inclusive. The purpose of this Act, as well as the Federal Home Loan Bank Act of July 22, 1932, and the Federal Lank Bank Act, is apparent throughout their content and from the debates in public committee hearings and in Congress. The ultimate purpose of these Acts is fundamentally the same—the rehabilitation of the people of an entire nation suffering from the most calamitous burden of debt, contraction of credit and economic and financial depression known in American history. Congress, by its expressions, apparently believed that government-supervised institutions making long time loans on homes and receiving savings in exchange for the issue of income shares of stock can be useful in increasing the market for government obligations and in being employed as fiscal agents for the government—even though its ultimate purpose was to stimulate a return of wholesome economic conditions. If the act carries out a legitimate end within the scope of the Constitution by appropriate means the motives of Congress cannot be questioned. Smith v. Kansas City Title & Trust Co., 65 L. Ed., p. 589. Congress having found it necessary to create this fiscal agency, and the power existing to do that, the extent of the actual exercise of the authority granted does not operate to restrict or impair the power. Id., p. 589.

[fol. 88] It is said by defendants' counsel that Congress went too far; that the same motive logically would lead to the control by the government of every conceivable business institution because of the relation of the latter to the banks. As stated by Marshall: "All must admit that the powers of the government are limited, and that its limits are not to be transcended." McCulloch v. Maryland, 4 L. Ed. p. 605. Whatever may be said against the extension of the power to the field suggested, yet in view of the character of savings and loan associations, and their universal use as a reservoir for the money savings of the people, it cannot be said to be clear that the Congress has in this instance transcended the limits of its powers granted in the Constitution.

The Home Owners' Loan Act, in which the Federal savings and loan associations are created, is but the sequel

of its predecessors. It is the complement of the Home Loan Bank Act of 1932. It is a link in the chain of consistent legislation.

Summarizing Chief Justice Marshall's opinion in McCulloch v. Maryland, Chief Justice White in First National Bank v. Fellows, 244 U. S. 416, 61 L. Ed. 1233, says: "In terms it was pointed out that this broad authority was not stereotyped as of any particular time, but endured, thus furnishing a perpetual and living sanction to the legislative authority within the limits of a just discretion, enabling it to take into consideration the changing wants and demands of society and to adopt provisions appropriate to meet every situation which it was deemed required to be provided for." Id. 1237.

When one considers the breadth of the scope of Congressional power as disclosed by the facts and the decision in Smith v. Kansas City T. & T. Co., 255 U. S. 180, 65 L. Ed. [fol. 89] 577, pertaining to the creation of Federal Land Banks and Joint Stock Land Banks, dealing with long time agricultural loans, it cannot be said that the present statute is plainly unconstitutional. It was said in that decision: "A bank is a moneyed institution to facilitate the borrowing, lending and caring for money. But whether technically banks or not, these organizations may serve the governmental purposes declared by Congress in their creation." Id. (65 L. Ed.) 589, 590.

In the light of the decisions cited it cannot be said that there is more than a fair doubt as to the asserted power of Congress extending to the creation of Federal savings and loan associations. "The question whether a law be void for its repugnancy to the Constitution, is at all times a question of much delicacy, which ought seldom, if ever, to be decided in the affirmative in a doubtful case." Dartmouth College v. Woodward, 4 Wheat. 518, 4 L. Ed. pp. 651-652. Many courts, including our own Supreme Court, have said that a statute must be presumed to be constitutional unless its repugnancy to the Constitution appears "beyond a reasonable doubt." 6 R. C. L. p. 99; R. C. L. Perm. Supp. "Const. Law," 98; Lawrence University v. Outagamie County, 150 Wis. 244, 246; Peterson v. Widule, 157 Wis. 641, 647; State ex rel. Carnation M. P. Co. v. Emery, 178 Wis. 147, 151; State ex rel. Blockwitz v. Diehl, 198 Wis. 326, 331; Blaisdell v. Home Building & Loan Association, 86 A. L. R. 1507, 1513.

III. Has Congress the power to authorize the conversion of State building and loan associations into Federal savings and loan associations without consent of the State?

Casey v. Galli, 94 U. S. 673, 24 L. Ed. 168 was an action commenced by a receiver to enforce the liability of a stockholder of the Bank of New Orleans, a Louisiana banking [fol. 90] corporation, which had converted itself into the New Orleans National Banking Association pursuant to the Banking Act of Congress of June 3, 1864. The defendant filed three pleas in abatement the second of which was to the effect that the Bank of New Orleans had no power by its charter, nor authority otherwise from the State of Louisiana, to change its organization to that of a national banking association under the laws of the United States. The court said:

"The second plea is clearly bad. No authority from the State was necessary to enable the bank so to change its organization. The option to do that was given by the 44th Section of the Banking Act of Congress. 13 Stat. at L. 112. The power there conferred was ample, and its validity cannot be doubted. The Act is silent as to any assent or permission by the State. It was as competent for Congress to authorize the transmutation as to create such institutions originally." Id. (24 L. Ed. p. 169.)

The doctrine thus announced has never been overruled. It is referred to with apparent approval in Ex parte Worcester County National Bank 279 U. S. 347, 73 L. Ed. 733, 737.

By virtue of that authority it must therefore be held that there is no necessity for a state enabling act in order that building and loan associations organized under Wisconsin Statutes may convert themselves into Federal savings and loan associations.

IV. Manner of exercise of act of conversion.

So long as the doctrine of Casey v. Galli (Supra) stands unmodified by the Supreme Court of the United States it cannot be held here that the voluntary conversion of a State association into a Federal association, created by Congress in the exercise of a power within the scope of the Federal Constitution, infringes upon the just authority of the State, even though the State withholds its consent.

But while the consent of the State is not necessary under the rule of the Casey Case the conversion by the State association can be effectuated only by its voluntary action. That can be achieved by an expression of the will of the [fol. 91] State association in the only manner possible for it to do so; that is, it must be governed by the provisions of its charter or the State law applicable to its method of expressing its will. Congress may employ State corporations with their consent as instrumentalities of the United States. Westfall v. U. S. 274 U. S. 256, 71 L. Ed. 1036, 1037. A provision in an act of Congress by which a smaller percentage of stock in a State corporation is fixed to procure corporate action than the percentage required by the charter of such association could not be sustained, for the consent of the State association would not thus be obtained. Commonwealth v. First National Bank & Trust Co., 154 Atl. (Pa. 379, 380, holding that only by obedience to the prescriptions of the statute of the State can a corporation called into being by the State be dissolved. Compare Fed. Land Bank v. Crookston T. Co. (Minn.) 230 N. W. 797; Northern Sec. Co. v. U. S. 193 U. S 197, 48 L. Ed. 679, 704.

Is the conversion requirement of 51% of the votes cast at a legal meeting contained in Sec. 5(i) of the Home Owners' Loan Act in conflict with any provision of the Wisconsin Statutes?

Sec. 181.03, Wis. Stats., provides for dissolution of domestic corporations by a vote of two-thirds of the stock. Sec. 215.36 (1) (as amended Feb. 2, 1932) provides for liquidation or dissolution of building and loan associations by a two-thirds vote of all its outstanding authorized capital stock. Sec. 215.335 provides that any building and loan association may absorb any other association located in the same county. It also provides that when two associations propose to consolidate, they must have the approval of the Commissioner of Banking and a majority vote of the board of directors of each such association, and that such proposed consolidation shall be ratified and confirmed by the affirmative vote of the shareholders of each such association owning at least two-thirds of its shares outstanding.

[fol. 92] If any of these provisions are applicable to conversion into Federal Savings and Loan Associations under

the Home Owners' Loan Act, then such applicable provision could not be validly overridden by the Act of Congress.

In the opinion of the writer the mentioned statutory provisions of Wisconsin are not so applicable. Those provisions do not relate to conversion into Federal associations, As to that the Wisconsin statutes are silent. It may be noted, for comparative purposes, that a Wisconsin statute provides for the reorganization of a State bank as a national bank. No provision as to the vote required is contained in that statute. Sec. 221.21. Hence the Federal statute, as to the vote required, would apply. Since the State's consent to conversion is not necessary, the conversion of a State building and loan association may be effected by the 51% vote fixed by Sec. 5 (i) of the Home Owners' Loan Act, unless it can be said that such conversion into a Federal association works a dissolution of and extinguishes the corporate identity of the State association. It appears, however, to be well established that the reorganization of a State bank as a national bank does not destroy its identity or corporate existence. Metropolitan Nat. Bank v. Claggett, 141 U. S. 520, 35 L. Ed. 841, 843; Michigan Ins. Bank v. Eldred, 143 U. S. 293, 36 L. Ed. 162, 164; Commonwealth v. First Nat. Bank & T. Co., 154 Atl. (Pa.) 379, 381 ("the conversion • • • is merely a change of title and governmental supervision"); 3 Ruling Case Law 658 ("Banks" 288); 15 A. L. R. 1133 Note.

While it is thus here concluded that no statute of this State is contravened by the provision in Sec. 5 (i) of the Home Owners' Loan Act as to the vote required for conversion, yet if it were otherwise—that is, if a two-thirds vote of all outstanding shares was required—the actual [fol. 93] vote disclosed that more than two-thirds of such shares has in the case of each of the plaintiff associations been cast in favor of conversion, as the court has been informed. These votes were taken, with the court's permission, since the hearing of the motions herein, the validity of the action taken being dependent upon the decision herein. Verified statements of the proceedings had wherein such votes were taken may be filed as parts of the record herein.

Conclusion

The arguments and briefs of counsel have been very thorough and helpful to the court. By way of a single exception, however, it may not be amiss to add that arguments of a political nature indulged in in the last portion of the main brief of plaintiffs' counsel are inept. So also are the assertions of such counsel that in order for a court to declare a law invalid it must find that the work of the lawmakers was "insincere, frivolous and childish." If that were true, then it would have to be admitted that the Supreme Court of the United States has on many occasions so designated the Acts of Congress. Most earnest and sincere Congressmen have frequently enacted unconstitutional measures. The questions in this case are close and have given the court great concern. It would be well to bear in mind the words of the great Marshall in writing of the division in President Washington's Cabinet respecting the power of Congress to create the first national bank of the United States:

"The liberal mind which can review them (the arguments) without prejudice, will charge neither the supporters nor the opponents of the bill with insincerity, nor with being actuated by motives which might not have been avowed."

(Marshall's Life of Washington, Vol. IV, p. 396.)

The plaintiffs' motions for a restraining order, to prevent the defendants from interfering with the proposed [fol. 94] conversion, are granted. The defendants' motions to prevent the plaintiffs from taking further steps to convert their Associations into Federal Savings & Loan Associations, are denied.

Charles L. Aarons, Circuit Judge.

Dated September 11th, 1934.

[fol. 95] In Circuit Court of Milwaukee County

[Title omitted]

[File endorsements omitted.]

Order for Judgment—Filed Sept. 12, 1934

On the 25th day of July, 1934 plaintiff obtained an order from this Court directing the defendants to show cause

before this Court on September 10, 1934 why the relief prayed for in plaintiff's complaint on file herein should not be granted. Said order to show cause also contained an ex parte order restraining the defendants from taking possession of the assets of the plaintiff and from interfering with the officers, directors and stockholders of the plaintiff in the conduct of any meeting or meetings called for the purpose of considering corporate business and more particularly the conversion of said plaintiff into a federal savings and loan association.

On July 27, 1934 the defendants served a notice on the plaintiff stating that on August 4, 1934 defendants would move for an order restraining and enjoining the plaintiffs, its officers, directors, stockholders, agents and employes, pending the final determination of this action, from taking any other or further steps in its attempt to convert into a federal savings and loan association, and vacating the temporary restraining order contained in plaintiff's order to show cause.

[fols. 96 & 97] The plaintiff's order to show cause and the defendants' motion came on to be heard on August 7, 1934. There being no issues of fact in the action, the parties through their respective counsel stipulated in open court at the said hearing with the consent of the Court that said hearing be the trial of the action and that the Court enter judgment upon the merits of the cause without the taking of testimony herein.

After hearing the arguments of counsel and being fully advised in the premises and pursuant to the written decision on file herein,

It is ordered that judgment be entered as follows:

1. Declaring that the plaintiff association has the right and power to convert into a federal savings and loan association, and that the Acts of Congress so providing, are valid and constitutional.

2. Declaring that the defendants have no right or authority to take possession of the plaintiff association to prevent its conversion into a federal savings and loan association.

3. Restraining and enjoining the defendants, their agents, servants and employees from taking possession of the plaintiff association or interfering in any way with the

proposed conversion of the plaintiff into a federal savings and loan association.

4. Dismissing the defendants' counterclaim on the merits.

Dated this 12th day of September, 1934.

By the Court:

Chas. L. Aarons, Circuit Judge.

[fols. 98 & 99] IN CIRCUIT COURT OF MILWAUKEE COUNTY

[File endorsements omitted.]

NORTHERN BUILDING AND LOAN ASSOCIATION, a Corporation, Plaintiff,

versus

PETER A. CLEARY et al., Defendants

JUDGMENT—Filed Sept. 12, 1934

This cause being at issue and coming on for trial before the court, and having been tried before this court, Hon. Chas. L. Aarons, Circuit Judge presiding, on August 7, 1934, upon the issues of law raised in the pleadings on file herein and the Court having ordered the entry of judgment as follows:

It is ordered, adjudged and declared:

(1) That the plaintiff association has the right and power to convert into a federal savings and loan association and that the Acts of Congress so providing, are valid and constitutional.

(2) That the defendants have no right or authority to take possession of the plaintiff association to prevent its conversion into a federal savings and loan association

(3) That the defendants, their agents, servants and employees be and they hereby are restrained and enjoined from taking possession of the plaintiff association or interfering in any way with the proposed conversion of the plaintiff into a federal savings and loan association.

(4) That the defendants' counterclaim be and the same hereby is dismissed on its merits.

Dated this 12th day of September, A. D. 1934.

By the Court:

Jas. L. McCormick, Clerk; By Harold H. Gruettner, Deputy Clerk.

[fol. 100] In Circuit Court of Milwaukee County

[Title omitted]

[File endorsements omitted]

Notice of Appeal—Filed Sept. 12, 1934

Please take notice that Peter A. Cleary, S. N. Schafer and H. F. Ibach as the Banking Commission of the Banking Department of the State of Wisconsin, and Clyde P. Diggles, Supervisor of Building and Loan Associations of the Banking Commission of the State of Wisconsin, the defendants in this action, hereby appeal to the Supreme Court of the State of Wisconsin from the judgment rendered and entered in this action in the Circuit Court for the County of Milwaukee on the 12th day of September, A. D. 1934 in favor of the plaintiff and against the defendants and from the whole of said judgment. A copy of said judgment is hereto annexed.

Dated September 12, A. D. 1934.

J. E. Finnegan, Attorney General; John E. Martin, Asst. Attorney General, Attorneys for Defendants. Benjamin Poss, Joseph P. Brazy, of Counsel.

To John H. Schlintz, Esq., Attorney for Plaintiff, 416 Caswell Block, 152 W. Wisconsin Avenue, Milwaukee, Wisconsin, and to the Clerk of the Circuit Court for Milwaukee County.

[fols. 101 & 102] Judgment omitted. Printed side page, 98 ante.

[fol. 103] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 104] [File endorsement omitted.]

IN SUPREME COURT OF WISCONSIN, AUGUST TERM, 1934

Nos. 212, 214, 215

STATE EX REL PETER A. CLEARY et al., Plaintiffs,

v.

HOPKINS STREET BLDG. & LOAN ASS'N, a Wis. Corporation et al., Defendants

RELIANCE BLDG. & LOAN ASS'N, a Corporation, Respondent

v.

PETER A. CLEARY et al., as Banking Commission et al., Appellants

NORTHERN BLDG. & LOAN ASS'N, a Corporation, Respondent.

v.

PETER A. CLEARY et al., as Banking Commission et al., Appellants

Appeal from two judgments of the circuit court for Milwaukee county: Charles L. Aarons, Circuit Judge. Reversed.

An original action commenced pursuant to leave granted by this court. Writ granted.

OPINION—Filed Dec. 11, 1934

The Reliance Bldg. & Loan Ass'n and the Northern Bldg. & Loan Ass'n each brought its action to restrain the banking commission and supervisor of building and loan asso- [fol. 105] ciations from interfering with the plaintiffs in their attempt to convert their association from a state building and loan association into a federal savings and loan association. On September 14, 1934, the banking commission, with leave of this court, began an original action against the Hopkins Street Bldg. & Loan Ass'n to restrain the association, its officers and agents from operating as a federal savings and loan association, to have defendant's attempted conversion into such an association declared null and void, and to compel the officers of said association to

operate it as a Wisconsin building and loan association or to wind up its affairs as such an association in the manner provided by the statutes of this state, on the ground that the Hopkins Street Bldg. & Loan Ass'n is under the jurisdiction of the banking commission of the state of Wisconsin. The cases of Reliance Bldg. & Loan Ass'n and the Northern Bldg. & Loan Ass'n were tried together in the circuit court for Milwaukee county before the court without a jury. The petition for leave to commence the original action in this court stands as the complaint. There was an appearance in this action by all of the named defendants and for "Hopkins Federal Savings & Loan Ass'n, a national corporation, organized pursuant to the acts of congress and the laws of the United States of America, and successor by conversion to Hopkins Street Bldg. & Loan Ass'n." An answer was interposed by the Hopkins Federal Savings & Loan Ass'n describing the proceedings taken and alleging the legality and sufficiency thereof in the matter of converting that association into a federal savings and loan association, a corporation under the government of the United States, and praying for a rule that the bank-[fol. 106] ing commission of the state of Wisconsin has no jurisdiction of the defendant.

[fol. 107] FAIRCHILD, J.

The Reliance Bldg. & Loan Ann'n and the Northern Bldg. & Loan Ass'n respondents on this appeal, and the Hopkins Street Bldg. & Loan Ass'n defendant in the original action here, are each Wisconsin corporations organized under the provisions of ch. 215, Stats. This chapter places the control and supervision of building and loan associations under the banking commission and authorizes the commission to take possession of and liquidate such an association when it shall appear that it is violating its charter or any of the laws of the state.

On July 22, 1932, Congress enacted the Federal Home Loan Bank Act. By virtue of the provisions of this act, state building and loan associations were eligible to membership and, under certain conditions and restrictions, entitled to borrow from a Federal Home Loan Bank. The Wisconsin legislature, on July 10, 1933, by its enactment of sec. 215.07 (8), Stats., authorized Wisconsin building and loan associations, with the approval of the commissioner

of banking, to become members of and borrowers from the Federal Home Loan Bank. Each of the building and loan associations here involved became members of the Federal Home Loan Bank. On June 13, 1933, there was enacted by the congress of the United States the Home Owners' Loan Act section 5 of which authorizes the Federal Home Loan Bank Board to provide for the organization of associations to be known as Federal Savings & Loan Ass'ns and to issue charters therefor; and on April 27, 1934, by amendment to the Home Owners' Loan Act, it was provided:

"Sec. 5 (i) Any member of the Federal Home Loan Bank may convert itself into a Federal Savings & Loan Association under this act upon a vote of 51 per centum or more of the votes cast at a legal meeting called to consider such action; but such conversion shall be subject to [fol. 108] such rules and regulations as the board may prescribe, and thereafter the converted association shall be entitled to all the benefits of this section and shall be subject to examination and regulation to the same extent as other associations incorporated pursuant to this act."

Following the passage of the amendment just referred to and without further consent or authority of the state, application was made by the three associations to the Federal Home Loan Bank Board for permission to convert themselves into federal savings and loan associations under the provisions of sec. 5 (i) of the Home Owners' Loan Act of 1933 as amended. In each case the Federal Home Loan Bank Board granted the permission. With reference to the Hopkins Street Bldg. & Loan Ass'n the banking commission undertook to prevent the proposed conversion but in compliance with the order of the circuit court for Milwaukee county, desisted from such attempt and the association accepted a charter from the Federal Home Loan Bank Board and has since held itself out to be a savings and loan association free from the jurisdiction and control of the banking commission of this state. An original action is brought against the association seeking to have the attempted conversion declared null, void, and of no effect. The Reliance Bldg. & Loan Ass'n and the Northern Bldg. & Loan Ass'n each began an action to restrain the banking commission from interfering with its pro-

posed conversion. In those cases the banking commission interposed counter-claims praying for declaratory relief similar to that sought in the original action in this court and an injunctional order to prevent the proposed conversion. This is briefly a description of the record in the three matters and they present identical questions. The learned judge who tried the two cases in which judgment [fol. 109] was entered below was of the opinion that congress had power to incorporate federal savings and loan associations; that the language of sec. 5 (i) of the Home Owners' Loan Act of 1933 as amended April 27, 1934, did not imply the necessity of consent by the state to the proposed conversion of a state loan association into a federal loan association; and that congress had the power to authorize the conversion without the consent of the state.

The cause was first submitted upon arguments and briefs dealing to a large extent with the questions of whether congress has power to incorporate federal savings and loan associations and as to the power of congress to supersede the authority of the state over building and loan associations created by the state and to invest such corporations with corporate power to transmute themselves into federal savings and loan associations. We have since been favored by the contending parties with supplemental briefs in which are able discussions of the reservation by the state of power over corporate charters. Since then we have again examined the questions raised. We are convinced that the precise question before us relates to the power of a building and loan association, organized under and subject to the laws of the state of Wisconsin, to convert itself into a savings and loan association under the federal act. While the other questions are well within the limits of proper discussion as outlined by the issues, it is worthy of emphasis that all other questions are incidental to this controlling question and such reference to them as may be made is in aid of the determination of the actual corporate powers of a state organized building and loan association to accomplish transmutation. This being true, we will therefore consider whether the respondents, by reason of provi- [fol. 110] sions in their charters of the laws of their creator, have any such power.

The respondents were created by the state of Wisconsin at a time when without question the state had plenary power to create and to control the powers of these corporations. They are not banks; they have not banking powers or privileges under our state laws. Leahy v. National Bldg. & Loan Ass'n. 100 Wis. 555, 76 N. W. 625; Julien v. Model Bldg. & Investment Ass'n. 116 Wis. 79, 92 N. W. 561; First Nat. Bank v. County of Dawson, 66 Mont. 321, — Pac. —; Lomb v. Pioneer Savings & Loan Co., 106 Ala. 591, — So. —; Hoenig v. Huntington Nat. Bank of Columbus, 59 Fed. (2d) 479, 48 L. ed. 560; Mercantile Nat. Bank v. Hubbard, 99 Fed. 465, Ch. 215 Stats. 1933. Their charters do not authorize them to divest themselves of the corporate charter conferred upon them by the laws of the state. They have only the powers emanating from the state. These powers must be used as prescribed by the state and with due consideration for the contractual rights between the stockholders and the corporation existing by reason of state law and the charter of the corporation. Under the declared law of the state, we are bound to hold that a corporation organized under our general incorporation laws has not the power to divest itself of the corporate character derived from this sovereign state by accepting a charter from any other sovereign government. Our constitution, sec. 1 Article XI provides:

"All general laws or special acts, enacted under the provisions of this section (section authorizing the creation of corporations) may be altered or repealed by the legislature at any time after their passage."

The people of our state thereby vested a reserve power over charters of corporations in the legislature. The idea that any other body or sovereign, a stranger to the contract, or that the corporation alone may deprive the state [fol. 111] of this power is foreign to the plain meaning of the language used in the constitution with relation to that subject. This provision of our constitution and similar provisions to be found in the constitutions of other states were adopted for the purpose of overcoming in part the effect of the decision of the United States Supreme Court in Trustees of Dartmouth College v. Woodward, 4 Wheaton 518, 4 L. Ed. 629. In that case it was held that a corporation created by a state became a separate corporate entity

and subject to control by the state to the extent only that citizens of the state were subject to control under the constitution; that any amendment, alteration or repeal of its charter which withdrew or impaired the obligations of the charter was in violation of section 10 Article I of the constitution of the United States which provides: "No state shall • • • pass any • • • law impairing the obligations of contracts."

The nature of the power expressly reserved by the Wisconsin constitutional provision has been dealt with in many case both in state courts and in the courts of the United States. A reference to these cases shows the extent of this power and its proper use in controlling charters issued to corporations. In West Wisconsin R. R. Co. v. Board of Supervisors of Trempealeau Co., 35 Wis. 257, 270, referring to sec. 1, Article XI of the constitution, the court said:

"The object and historical origin of the provision in the constitution of this state are matters known to all professional men. They were, through this paramount authority, to retain and secure to the state full power and control over corporate franchises, rights and privileges which it might grant—a power and control which the state was in a measure deprived of by the federal constitution, as that instrument had been interpreted in the celebrated Dartmouth College case."

It was also considered in another celebrated case, The [fol. 112] Attorney General v. Railroad Companies, 35 Wis. 425, 574, where the court said:

"And, by force of the constitutional power reserved and of the uniform construction and application of it, the rule of the Dartmouth College case, as applied to corporations, never had a place in this state, never was the law here. The State emancipated itself from the thraldom of that decision, in the act of becoming a state; and corporations since created here have never been above the law of the land.

"Subject to this reserved right, and under the rule in the Dartmouth College case, charters of private corporations are contracts. • • • The material property and rights of corporations should be inviolate, as they are here; but it comports with the dignity and safety of the state that the

franchises of corporations should be subject to the power which grants them, that corporations should exist as the subordinates of the state, which is their creator, *durante bene placito.*

"This is a question of state law, not of federal law. We give full scope to the federal constitution as interpreted by the federal courts, but we stand clearly outside of both. This question could be brought within the Dartmouth College rule, not by interpretation of the federal constitution, but by interpretation of the state constitution only. That is our function. We accept the construction of the federal constitution as the federal courts give it. But we give construction to our own constitution for ourselves. And there we might well rest."

The court pointed out that the exercise of the reserve power had been sanctioned by the federal and other state courts and cited cases.

While the federal constitution contains no power reserving to congress the right to amend, alter or modify the charters of corporations created by it, congress has in numerous instances reserved the power in the act by which corporations were created. In Union Pacific R. R. Co. v. United States, 99 U. S. 700, 25 L. Ed. 496, the Supreme Court of the United States had under consideration the act of Congress incorporating the Union Pacific Railroad Company, which act contained the following reservation: "Congress may at any time alter, amend or repeal this act." Considering this in connection with a former act of congress, the court said:

"We are of the opinion that congress not only retains, [fol. 113] but has given special notice of its intention to retain, full and complete power to make such alterations and amendments of the charter as come within the just scope of legislative power. That this power has a limit, no one can doubt. All agree that it cannot be used to take away property already acquired under the operation of the charter, or to deprive the corporation of the fruits actually reduced to possession of contracts lawfully made; but, as was said by this court, through Mr. Justice Clifford, in Miller v. The State, 15 Wall. 498, 21 L. ed. 104, 'It may safely be affirmed that the reserve power may be exercised, and to almost any extent, to carry into effect the original purposes of the

grant, or to secure the due administration of its affairs, so as to protect the rights of stockholders and of creditors, and for the proper disposition of its assets.' "

See also Close v. Greenwood Cemetery, 107 U. S. 466, 476, — L. Ed. —; Tomlinson v. Jessup, 82 U. S. 454, 21 L. Ed. 204.

In Huber v. Martin, 127 Wis. 412, 105 N. W. 1031, 105 N. W. 1035, a law was held unconstitutional under which a mutual insurance company attempted to convert itself into a stock company pursuant to an act of the legislature of the state of Wisconsin permitting it to do so at the option of two-thirds of its existing policy holders, representing not less than one-half of its outstanding insurance. It was sought to sustain this action of the legislature under sec. 1 of Article XI as an exercise of the power thereby reserved. It was argued that since the legislature had power to provide for the dissolution of a corporation, it might also provide for the disposition of its assets to a successor corporation. The court said:

"The right of the corporation to hold its property in harmony with that situation, and the rights of the members to have the same so held and administered, were property interests resting on contractual obligations and so within the guaranty of the state constitution as regards the passage of laws impairing the obligations of contract, sec. 12, Art. I, Const. of Wis., and that of the national constitution as regards the deprivation of property without due process of law, or denying to persons the equal protection of the laws. XIVth Amend. U. S. Const. * * * The act of the legislature in question, in terms or in effect, authorizes the appropriation of the property of one private corporation and the equitable interests therein of the members in violation of the corporate charter rights of the former corpora-
[fol. 114] tion, and in defiance of the wishes of such of its members as do not choose to consent thereto."

The matter was further dealt with in State ex rel. Northern Pacific R. Co. v. Railroad Comm., 140 Wis. 145, 157, 121 N. W. 919. In that case the court said:

"The reserve power stops short of the power to divest vested property rights, and is embodied in the state constitution for the purpose of enabling the state to retain control

over corporations, and must be construed in connection with the other provisions of the constitution to the effect that private property shall not be taken for public use without compensation. Moreover, the power to alter or amend is a reserve power in the interest of the state to modify or repeal its own contract with the corporation. Tomlinson v. Jessup, 82 U. S. 454; State v. C. & N. W. R. Co. 128 Wis. 449, 108 N. W. 594."

There can be no doubt but that it was intended by the framers of the constitution to reserve in the state the power to alter or repeal the charter of any corporation created by the legislature. The constitution having thus limited the power of the legislature, it would seem to follow that the legislature is without authority to divest itself of the power reserved to it by the constitution. But if it should be held that the legislature has such power, it is still constitutionally disabled from authorizing any part of the stockholders of a corporation created by it, to impose a new charter upon non consenting members of the corporation. A fundamental and radical change in the purpose of a corporation cannot be accomplished by an act of the corporation over the dissent of a single stockholder. Martin Orchard Co. v. Fruit Growers C. Co. 203 Wis. 97, 233 N. W. 603; Huber v. Martin, supra; 7 Ruling Case Law, p. 97. And there is a fundamental and material difference between being a member of a building and loan association over which the representatives chosen by the people of this state have the reserve power of control and being a member of one created [fol. 115] by the legislative body of a different sovereign power.

Our legislature has enacted laws covering the entire subject matter of control of these associations and has molded them to the needs of the communities, regulating the manner by which they may come into existence and continue in business. Ch. 215, Stats., 1933, expressly regulates the powers conferred upon them. If it be urged that sec. 215.07 (8), Stats. reading:

"With the approval of the commissioner, any association may borrow money from the federal home loan bank upon such terms and for such time as the laws and rules of such federal home loan bank may prescribe, the provision in subsection (2) of section 215.07 as to the one-year time

limit and as to the amount that may be borrowed, to the contrary notwithstanding."

authorizes a building and loan association organized under the provisions of chapter 215 to divest itself of its charter as a state corporation, the answer is that sec. 215.07(8) confers no such power nor was it intended to confer such power. Sec. 215.07(2), Stats. 1933, provides:

"To borrow money for temporary purposes, not inconsistent with the objects of the association, and issue its evidences of indebtedness therefor, but for no longer term than one year and not exceeding in the aggregate amount one-fifth of the assets on hand."

Sec. 215.07(8) is a provision authorizing building and loan associations, as to loans made from the federal home loan bank, to waive the limitation upon the power to borrow found in sec. 215.07(2). It does not attempt to deal with the power of a building and loan association to sever the ties which bind it to the state from which it derives its charter. To hold that such power was conferred by sec. 215.07(8) would be clear judicial legislation in a matter vitally important to the state involving large questions of public policy. Since respondents' charters do not provide for transmutation and no authority emanating from the [fol. 116] state of Wisconsin accords them the privilege, or attempts to confer corporate power upon them to transmute, two questions are suggested. First, has congress by enactment of the Home Owners' Loan Act attempted to supersede the authority of the state and actually to invest respondents with corporate power essential to a transmutation? Second, if it be found that it was the purpose of congress by that act thus to increase respondents' corporate powers, then, has congress the power to accomplish this result? We are not treating specifically the second question for reasons already set forth.

As to the first question, we are of the opinion that the Federal Home Owners' Loan Act does not affect the state's right to charter corporations and retain control over them under the state constitution from the date of their beginning until in some lawfully prescribed way they pass out of existence as state corporations. Nor does that act attempt to invest the state corporations with any power not

granted to them by the state which created them. The act was intended to be administered in forty eight states, and applies to corporations operating under different degrees of state control and with different powers. It does not purport to invest the various state corporations with any new or different corporate powers. It does no more than to afford consent applicable to corporations having the power to transmute. If a state, either in the original charter of its corporation or by subsequent legislation, permitted such a transmutation as is proposed here upon consent of 75 per centum of the stockholders, such a corporation could not change into a federal corporation upon a vote of 51 per centum of the stockholders. Nor would a state statute [fol. 117] providing a minimum below 51 per centum render the association acceptable. The 51 per centum provision set up in the federal act may readily be interpreted as the manner of consenting by the membership which the federal government requires to a transmutation. The opportunity is thus afforded to those who are so situated that they can accept the offer if it be deemed by them to be to their advantage. It does not appear to be a supplanting of the requirements in the charter of a corporation. Were it otherwise, the exercise of such a power would do two things; first, it would enable a building and loan association to escape from regulatory control reserved by the state, and second, it would divest stockholders of their rights in the corporation under state law and substitute therefor rights alleged to be equivalent in a corporation organized under the laws of the United States. As pointed out elsewhere in this opinion, this would raise serious constitutional questions, for a corporate charter is not only contractual between the state and its creature corporation, but it is also contractual with respect to the rights of a stockholder in a corporation. Huber v. Martin, supra.

Any method under which a state association seeks to transfer itself into a federal group without consideration of the contractual relation existing between it and the state would seem to be ineffective. It has only the powers emanating from the state and these must be used as prescribed by the state with due consideration for the contractual rights between stockholders and the association existing by reason of state laws and the charter of the corporation.

We will not review all the cases cited by respondents in support of the claim of right to transmutation, but our

attention is called to Casey v. Galli, 94 U. S. 673, 24 L. Ed. [fol. 118] 168, and particular emphasis is placed on the statement in the opinion: "It was as competent for congress to authorize the transmutation as to create such institutions originally." A receiver of a national bank, which by an act of congress had been converted from a state bank without an enabling act by the state, brought suit against a stockholder upon his stockholder's liability. A plea in abatement based upon the failure to obtain the consent of the state was held bad. That the quoted words were intended to be a complete statement of a rule of law to the exclusion of all qualifications may well be doubted, but even if such was the intention, we cannot recognize the result in that case as determining that the federal government may invade the jurisdiction of the state government and appropriate for its own purposes the agencies devised by the state for the welfare of its citizens or interfere against the wish of the state with respect to contracts existing between the state and corporations of its own creation. Whatever power congress may have over transmutation of banking corporations, it may at least be reasonably questioned whether it has such power with respect to other domestic corporations organized under state law for the state's purposes in providing for the welfare of its citizens. It ought also to be said that aside from the fact that the Home Owners' Loan Act does not deal with the general subject of banking, as did the law involved in the Galli case, it is otherwise quite different from the the statute there involved and construed. That act authorized state banks to become national banks. 13 U. S. Stats. at Large, 112, 113, provided "that any bank incorporated by special law, or any banking institution organized under a general law of any state, may, by authority of this act, become a national asso- [fol. 119] ciation under its provisions • • • ". It is specifically provided that "the articles of association and the organization certificate required by this act may be executed by a majority of the directors of the bank or banking institution; and said certificate shall declare that the owners of two-thirds of the capital stock have authorized the directors to make such certificate and to change and convert the said bank or banking institution into a national association under this act." A majority of the directors are thereafter specifically given the power to execute all

necessary papers essential to a perfection of the organization as a national association. This act constituted an unmistakable investiture of corporate powers upon state banks. If our conclusion that the Home Owners' Loan Act operates merely as an authority or consent, or definition of the conditions under which transmutation will be permitted, so far as the federal government is concerned, without purporting to increase corporate powers of state corporations, is not clearly sustained by the act, it must at least be said to be ambiguous and to be open to this construction. We think it should be so construed in order to avoid a number of serious constitutional objections which may here be recited without determining their validity, but merely as an aid to construction. The first is the objection that since Wisconsin, by power reserved in its constitution, has retained control over corporations organized under its laws, and since the state undoubtably had plenary powers, both of organization and control, prior to this act, it cannot be ousted by any act of congress from these powers; that since a building and loan association is not a banking institution, the case of Casey v. Galli, supra, has no applica-[fol. 120] tion; that the change in the corporate charter permitting conversion upon a vote of 51 per centum of the stockholders would be an impairment of the contract rights of stockholders in a Wisconsin corporation. That these are serious constitutional objections must be conceded, whatever their proper solution may be. Further than this, an attempt on the part of congress to interfere with the control of corporations organized under state laws, and to invest them with new powers, must certainly be regarded as a very sweeping and fundamental innovation. In view of these considerations, the act itself should contain the clearest sort of language to warrant the contention asserted by respondents. This we do not find.

Respondents call our attention to Ex Parte Worcester National Bank, 279 U. S. 347. From the opinion of the United States Supreme Court in that case, it appears that the Supreme Judicial Court of Massachusetts held that under the constitution and laws of that state, a state bank could change its organization to that of a federal bank without any authority given by the state to make the change. That decision rests definitely upon a determination by the Supreme Judicial Court of Massachusetts of a question of

state law. We shall not attempt an analysis of the decision of the Massachusetts court. The question before us is one of state law and in answering that question we must proceed in accordance with the existing law of the state of Wisconsin.

It is our conclusion that respondents have no power to transmute, and that any purported efforts in that direction are void for want of this power. It is assumed that if the act of congress is to be given the construction contended for by respondents, it results not in the creation of a new [fol. 121] corporation but in the transfer of its allegiance by the state corporation, from the sovereignty of its creation, to the federal government. It has not been thought necessary to consider the possibility that congress, by this act, has created a new corporation, because in that event, there being no provision in the charter of the original corporation or in the laws of Wisconsin for a transfer of its property, the corporation would find itself a naked legal entity without any means of carrying out the purposes of the transfer.

By the Court:

Judgments entered in the circuit court are reversed, causes remanded with directions to enter judgment in favor of the banking commission on its counter-claim. In the original action in this court, let the writ issue.

[fol. 122] In Supreme Court of Wisconsin

Northern Building and Loan Association, a Corporation, Respondent,

vs.

Peter A. Cleary, S. N. Schafer and H. F. Ibach as the Banking Commission of the Banking Department of the State of Wisconsin, and Clyde P. Diggles, Supervisor of Building and Loan Associations of the Banking Commission of the State of Wisconsin, Appellants.

Appeal from Circuit Court Milwaukee County, State of Wisconsin

Judgment—Dec. 11, 1934

This cause came on to be heard on appeal from the judgment of the Circuit Court of Milwaukee County and was ar-

gued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the Circuit Court of Milwaukee County, in this cause, be, and the same is hereby, reversed, with costs against the said respondent — taxed at the sum of —.

And that this cause be, and the same is hereby, remanded to the said Circuit Court with directions to enter judgment in favor of the banking commission on its counter-claim.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 123] IN SUPREME COURT OF WISCONSIN

[Title omitted]

[File endorsement omitted]

NOTICE OF MOTION FOR REHEARING—Filed Dec. 20, 1934

Please take notice that the plaintiff, Northern Building & Loan Association, a corporation, above named, is filing with the Clerk of the above named Court, a motion for rehearing, a copy of which is hereto annexed.

Dated December 18, 1934.

John H. Schlintz, Lyman W. Sherwood, of Counsel.

To J. E. Finnegan, Attorney General; John E. Martin, Assistant Attorney; Benjamin Poss, Attorney for Defendants; Joseph P. Brazy of Counsel.

[fol. 124] IN SUPREME COURT OF WISCONSIN

[Title omitted]

MOTION FOR REHEARING—Filed Dec. 20, 1934

Now comes, Northern Building & Loan Association, a corporation, plaintiff herein, by its respective undersigned at-

torney for record herein, and move for a rehearing in the above entitled action.

Dated December 18th 1934.

John H. Schlintz, Attorney for plaintiff, Lyman W. Sherwood of Counsel.

[fol. 125] Rehearing

Received a copy December 18, 1934.

Benjamin Poss, Special of Counsel; J. E. Finnegan, Atty. Gen.; John E. Martin, Ass't Atty. Gen.; By Ben. Poss

[File endorsement omitted]

[fol. 125-a] In Supreme Court of Wisconsin

[Title omitted]

Order Denying Motion for Rehearing—Feb. 5, 1935

The Court being now sufficiently advised of and concerning the motion of the said respondent for a rehearing in this cause, it is now here ordered that said motion be, and the same is hereby, denied.

[fols. 126 & 127] In Circuit Court of Milwaukee County

[Title omitted]

[File endorsement omitted]

Notice of Remittitur—Filed March 9, 1935

To John H. Schlintz,
416 Caswell Block,
Milwaukee, Wisconsin.

You will please take notice that the remittitur of the Supreme Court of the State of Wisconsin, in the above entitled action was received, entered of record and duly filed

in the Office of the Clerk of the Circuit Court of Milwaukee County, Wisconsin, on the 5th day of March, 1935.

Dated this 7th day of March, 1935.

J. E. Finnegan, Attorney General, Attorney for Defendants. Benjamin Poss, Joseph P. Brazy, Of Counsel.

[fols. 128 & 129] IN CIRCUIT OF MILWAUKEE COUNTY

[Title omitted]

[File endorsement omitted]

NOTICE OF MOTION FOR JUDGMENT ON REMITTITUR—Filed March 9, 1935

To John H. Schlintz,
Attorney for Plaintiff.

Please take notice that on the 9th day of March, 1935 at 9:00 o'clock A. M., or as soon thereafter as counsel can be heard, defendants will appear before the Calendar Branch of the above named Court in the Court House in the City and County of Milwaukee, State of Wisconsin, and move for an order for judgment in accordance with the remittitur of the Supreme Court of the State of Wisconsin, on file herein, remanding this cause with directions to reverse the judgment heretofore entered and to enter judgment in favor of the defendants on their counterclaim.

Dated at Milwaukee, Wisconsin, March 7th, 1935.

J. E. Finnegan, Attorney General, Attorney for Defendants. Benjamin Poss, Joseph P. Brazy, Of Counsel.

[fol. 130] IN CIRCUIT COURT OF MILWAUKEE COUNTY

[Title omitted]

[File endorsement omitted]

OBJECTIONS TO ENTRY OF JUDGMENT IN FAVOR OF DEFENDANTS—Filed March 9, 1935

Now comes the above named plaintiff, by John H. Schlintz, its attorney, and objects to the entry of the judg-

ment in favor of the defendants in the above entitled action for the reason that plaintiff is and was at all times a mutual loan and building association duly organized under and pursuant to Chapter 93 of the Revised Statutes of the State of Wisconsin for the year 1898 and Acts amendatory thereof and supplementary thereto, with its office and principal place of business in the city and County of Milwaukee, state of Wisconsin, engaged in the business of the creation and care of a mutual savings fund from payments made to it by its members, the making of loans to its members upon real estate security situated within Milwaukee County, Wisconsin, and such other security authorized by the laws of the State of Wisconsin, and the by-laws of said Association.

That the Congress of the United States of America enacted and the President of the United States of America approved the Federal Home Loan Bank Act, and that pursuant thereto and in accordance therewith the Federal Home Bank of Chicago, located in Evanston, Illinois, was duly organized and ever since said time has been and now [fol. 131] is such duly organized, existing and operating bank, that subsequently, to wit: on or about June 13, 1933, said Congress enacted and said President approved the Home Owners' Loan Act of 1933 and provided therein, among other things, for the organization, incorporation, examination, operation and regulation of associations to be known as "Federal Savings and Loan Associations" and to issue charters therefor, giving primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States; that by amendment duly enacted by said Congress and approved by said President on or about April 27, 1934, said Home Owners' Loan Act of 1933 was amended, and it was provided among other things, in Section 5 (i), as amended by the 73rd Congress on April, 27, 1934, as follows:

"Any member of the Federal Home Loan Bank may convert itself into a Federal Savings and Loan Association under this Act upon a vote of 51 per centum or more of the votes cast at a legal meeting called to consider such action; but such conversion shall be subject to such rules and regulations as the Board may prescribe, and thereafter the converted association shall be entitled to all the benefits of this section and shall be subject to examination and regulation

to the same extent as other associations incorporated pursuant to this Act."

That pursuant to Section 215.07, Subparagraph 8, Wisconsin Statutes, said plaintiff, on or about November 14, 1932, applied to the banking commission of the Banking Department of the State of Wisconsin for permission and authority to become a member of and borrow money from aforementioned Federal Home Loan Bank of Chicago; that on or about November 16, 1932, such permission and authority was duly issued to and received by said plaintiff from A. C. Kingston, Commissioner of Banking of the State of Wisconsin, by said defendant, Clyde P. Diggles, as Supervisor of Building and Loan Associations of Wisconsin; that pursuant to aforementioned Federal Home Loan Bank Act and to the permission and authority so granted by said Banking Commission of the State of Wisconsin, said plaintiff, on or about October 17, 1932, such plaintiff applied for [fol. 132] membership, subscribed for forty-four (44) shares of stock in, to and of said Federal Home Loan Bank Board at Washington, D. C., its official certificate of membership of said plaintiff in said bank dated as of August 11, 1933; that said plaintiff has been ever since said last mentioned date and is now a member in good standing and a stockholder in said Federal Home Loan Bank of Chicago.

That heretofore to wit: On or about March 12, 1934, said plaintiff, in accordance with the provisions of said Home Owners' Loan Act of 1933, by its duly constituted officers and directors and by proper resolution, filed its application with and made application to said Federal Home Loan Bank of Chicago for permission to convert into a Federal Savings & Loan Association; that thereupon said bank made such examination of the affairs of the plaintiff and such appraisal as might be reasonably sufficient to determine the nature, character and value of its assets and the financial condition of said plaintiff, and that on or about July 20, 1934, after such examination and appraisal, it appeared to said Federal Home Loan Bank of Chicago that conversion of said plaintiff into a Federal Savings and Loan Association was feasible and advisable, and accordingly, on said last mentioned date, said Federal Home Loan Bank of Chicago, pursuant to said Home Owners' Loan Act of 1933 as amended April 27, 1934, granted permission to said plaintiff so to convert on a one hundred per cent basis;

that said permission so to convert has been at all times since said last mentioned date and now is outstanding and of full force and effect.

That subsequently, to wit on or about July 24, 1934, said plaintiff, pursuant to said Home Owners' Loan Act of 1933, as amended, by its duly constituted Board of Directors and by proper resolution, issued and caused to be mailed to each of the stockholders of said plaintiff association, at their last given post office address, a thirty day notice in [fol. 133] writing of a special meeting of said stockholders to be held at 2964 North Eleventh Street, city and county of Milwaukee, Wisconsin, on the 14th day of August, 1934, for the purpose of considering, and determining and voting upon the recommendation and resolution of the Board of Directors of said plaintiff Association that said plaintiff convert itself into a Federal Savings and Loan Association as aforesaid.

That at a special meeting held by the stockholders of plaintiff association called for the purpose of conversion of said association into a Federal Savings and Loan Association; that the actual number of shares represented at said meeting, either in person or by proxy was 23,302 shares, and that 23,291 shares voted against the adoption of said resolution, and that the total outstanding stock of said association on the date of said stockholders' meeting was 35,308 shares, and by reason of the foregoing, judgment for the defendant in the above entitled action should be denied for the reason that the plaintiff, in accordance with the Constitution of the United States of America, the Acts of Congress, Constitution of the State of Wisconsin, and the laws of the State of Wisconsin, has the right to convert from a State building and loan association into a Federal Savings & Loan Association.

John H. Schlintz, Attorney for Plaintiff.

To Benjamin Poss, Joseph P. Brazy, of Counsel; J. E. Finnegan, Attorney General; John E. Martin, Asst. Attorney General; Attorneys for Defendants.

[fol. 134] State of Wisconsin,
Milwaukee County, ss:

John H. Schlintz, being first duly sworn on oath deposes and says that he served the annexed objections to the entry

of judgment on one of the attorneys for the defendant, to wit: Jos. P. Brazy, in the city and county of Milwaukee, state of Wisconsin, on the 9th day of March, 1935, by then and there delivering to and leaving with him a true copy of the original hereunto annexed and that he knew the person so served to be one of the attorneys for said defendants, and at the time of said service he endorsed his name and date of service on the copy so served.

John H. Schlintz.

Subscribed and sworn to before me this 11th day of March, 1935. Clarence P. Nett, Notary Public, Milwaukee Co., Wis.

[fol. 135] In Circuit Court of Milwaukee County

Northern Building & Loan Association, a Corporation, Plaintiff,

vs.

Peter A. Cleary, S. N. Schafer and H. F. Ibach, as the Banking Commission of the Banking Department of the State of Wisconsin, and Clyde P. Diggles, Supervisor of Building and Loan Associations of the Banking Commission of the State of Wisconsin, Defendants

Judgment—Filed March 9, 1935

This cause having been tried before this court Hon. Chas. L. Aarons, Circuit Judge presiding, on August 7, 1934, and judgment having been rendered for the plaintiff on the 12th day of September, 1934, granting the said plaintiff the relief which it sought in its complaint and dismissing the defendants' counterclaim on its merits; and the defendants having duly appealed from the judgment, and the whole thereof, to the Supreme Court of the State of Wisconsin, by which the said judgment was on the 11th day of December, 1934, wholly reversed and a motion for rehearing denied February 5th, 1935; and the record in this cause having been duly remitted from the Supreme Court to the Circuit Court upon such reversal with directions by said appellate court that judgment be entered in favor of the defendants on their

counterclaim; and due notice thereof having been given to the plaintiff as appears by the proofs on file; and due notice for the application of this judgment having been given:

On motion of J. E. Finnegan, Attorney General, Benjamin Poss and Joseph P. Brazy, of counsel, attorneys for the defendants,

[fol. 136] It is ordered, adjudged and declared;

(1) That the complaint herein be and the same hereby is dismissed upon its merits.

(2) That the plaintiff association, its officers, directors, stockholders, agents, and employes be and they are hereby restrained and enjoined from taking any other or further steps in the matter of the attempted conversion by said plaintiff association into a federal savings and loan association.

(3) That the defendants have full power and authority to take possession of the plaintiff association under the laws of the State of Wisconsin.

By the Court:

Charles L. Aarons, Circuit Judge.

Dated at Milwaukee, Wisconsin, this 9th day of March, A. D. 1935.

[fol. 137] [File endorsement omitted.]

[fol. 138] [File endorsement omitted]

IN CIRCUIT COURT OF MILWAUKEE COUNTY

[Title omitted]

NOTICE OF APPEAL—Filed March 9, 1935

Please take notice that Northern Building & Loan Association, the plaintiff in this action, hereby appeals to the Supreme Court of the State of Wisconsin from the judgment entered and rendered in this action in the Circuit Court for the County of Milwaukee, on the 9th day of March, 1935, in favor of the defendants and against the

plaintiff and from the whole of said judgment. A copy of said judgment is hereto annexed.

Dated March 9, 1935.

John H. Schlintz, Attorney for Plaintiff.

To J. E. Finnegan, Attorney General; John E. Martin, Asst. Attorney General, Attorneys for Defendants. Benjamin Poss, Joseph P. Brazy, of Counsel. And to the Clerk of the Circuit Court for Milwaukee County.

[fols. 139 & 140] Judgment omitted; printed side page 135, ante.

[fol. 141] [File endorsement omitted]

IN CIRCUIT COURT OF MILWAUKEE COUNTY

[Title omitted]

STIPULATION AND ORDER WAIVING BOND ON APPEAL—Filed March 9, 1935

It is hereby stipulated by and between the parties to this action, through their respective counsel, that the undertaking on appeal to the Supreme Court to pay all costs and damages by virtue of said appeal, is hereby waived.

Dated this 9th day of March, 1935.

John H. Schlintz, Attorney for Plaintiff; James E. Finnegan, Atty. Gen.; Benj. Poss, of Counsel, Attorneys for Defendants, by Joseph P. Brazy.

Upon reading and filing the above stipulation,

It is hereby ordered that the undertaking on appeal to the Supreme Court to pay all costs and damages by virtue of said appeal, be and the same is hereby waived.

Dated this 9th day of March, 1935.

By the Court:

Chas. L. Aarons, Circuit Judge.

[fol. 142] Received copy March 9, 1935.

J. E. Finnegan, Atty. Gen.; Benj. Poss, of Counsel, by Joseph P. Brazy.

[fols. 143 & 144] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 145 & 146] IN SUPREME COURT OF WISCONSIN

[Title omitted]

ORDER SETTING CAUSE—May 1, 1935

And now at this day came the said appellant and moved the Court that this cause be placed on the January 1935 calendar, which motion having been submitted to the Court,

It is now here ordered, that said motion be, and the same is hereby, granted and that the cause be placed on the January 1935 calendar and be considered forthwith upon stipulation of the parties.

[fol. 147] IN SUPREME COURT OF WISCONSIN

NORTHERN BUILDING AND LOAN ASSOCIATION, a Corporation, Respondent,

vs.

PETER A. CLEARY, S. N. SCHAFER and H. F. IBACH as the Banking Commission of the Banking Department of the State of Wisconsin, and Clyde P. Diggles, Supervisor of Building and Loan Associations of the Banking Commission of the State of Wisconsin, Appellants

Appeal from Circuit Court Milwaukee County, State of Wisconsin

JUDGMENT—May 1, 1935

This cause came on to be heard on appeal from the judgment of the Circuit Court of Milwaukee County and was argued by counsel. On consideration whereof; and

It appearing to the satisfaction of the Court that the judgment entered in the Circuit Court of Milwaukee County dated March 9th, 1935, was entered pursuant to and in conformity with the mandate of this Court dated December 11, 1934,

It is now here ordered and adjudged by this Court that said judgment be, and the same is hereby affirmed without costs.

[fol. 148] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 149] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION AS TO PRINTING RECORD—Filed May 15, 1935

Comes now, Northern Building and Loan Association, a corporation, appellant in the above entitled cause, and adopts its assignments of error as its statement of the points to be relied upon, and states that the whole of the record, as filed, is necessary for the consideration of the case.

Dated May 1st, 1935.

Emery J. Woodall, Attorney for Appellant. John H. Schlintz, Lyman Sherwood, of Counsel.

Service acknowledged this 8th day of May, A. D., 1935.

James E. Finnegan, Atty. Gen., by J. E. Messerschmidt, Asst. Atty. Gen., Attorneys for Appellees.

[fol. 149½] [File endorsement omitted.]

[fol. 150] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—June 3, 1935

Appeal from the Supreme Court of the State of Wisconsin

Treating the appeal papers herein from the Supreme Court of the State of Wisconsin as an application for a writ of certiorari;

On consideration whereof, it is ordered by this Court that the said application for writ of certiorari be, and the same is hereby, granted.

Endorsed on cover: File No. 39,600. Wisconsin Supreme Court. Term No. 57. Northern Building and Loan Association, Appellant, vs. Peter A. Cleary, S. N. Schafer and H. F. Ibach, as the Banking Commission of the Banking Department of the State of Wisconsin, et al. Filed May 15, 1935. File No. 57 O. T. 1935.